

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. TIBURCIO BALBAR, DEFENDANT-APPELLEE.

G.R. Nos. 20216-17. November 29, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On August 20, 1960 defendant-appellee Tiburcio Balbar allegedly entered the room where schoolteacher Ester Gonzales, complainant herein, was conducting her classes. Without warning and right after complainant had finished writing on the blackboard, defendant allegedly placed his arms around her and kissed her on the eye. Shocked, complainant instinctively pushed Balbar away and tried to flee. Defendant allegedly brought out his "daga" (a local dagger) and pursued complainant, catching up with her before she was able to get out of the room. Defendant embraced her again, at the same time holding on to his "daga". They both fell to the floor, as a result of which complainant sustained slight physical injuries.

Two informations, one for Direct Assault Upon A Person in Authority and another for Acts of Lascivious-ness (Criminal Cases Nos. 823 and 841 respectively) were filed by the Assistant Provincial Fiscal against defendant before the Court of First Instance of Batangas, the latter charge upon written complaint filed by the offended party, duly sworn to before the Clerk of Court.

The information for Direct Assault Upon A Person in Authority is hereunder quoted:

"The undersigned Assistant Provincial Fiscal accuses Tiburcio Balbar of the crime of Assault upon a Person in Authority, committed as follows:

"That on or about the 29th day of August, 1960, in Barrio Cumba, Municipality of Lian, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously assault Miss Ester Gonzales, a public school teacher in the school building of Lian, duly qualified and appointed as such and while in the performance of her official duties or on the occasion therefor, by then and there pulling his dagger, embraced and kissed, and repeatedly trying to embrace and kiss the said teacher, Miss Ester Gonzales. That the crime was committed with the aggravating circumstances of having committed it inside the school building and during school classes.

"CONTRARY TO LAW."

The information for Acts of Lasciviousness reads:

"At the instance of the offended party in the above-entitled case, the undersigned Assistant Provincial Fiscal accuses TIBURCIO BALBAR of the crime of acts of lasciviousness committed as follows:

"That on or about the 29th day of August, 1960, in the Barrio of Cumba, Municipality of Lian, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with the deliberate intent to satisfy his lust, did then and there wilfully, unlawfully and feloniously commit an act of lasciviousness on the person of Miss Ester Gonzales, a public school teacher, by then and there placing himself close to her, embracing and kissing her against her will and by means of force, and as a consequence thereof

said offended party fell to the floor resulting to her injury which caused her pain and tenderness on the right side of the trunk on the posterior surface of the right arm which injuries may require 3 to 4 days to heal; that the crime was committed with the aggravating circumstance that the same was perpetrated inside the public school building and during class hour.

"CONTRARY TO LAW."

The accused filed separate motions to quash, contending that "(a) with respect to Criminal Case No. 823 for Direct Assault, the information does not charge a sufficient cause of action and that it charges two offenses in a single complaint; and (b) with respect to Criminal Case No. 841 for Acts of Lasciviousness, x x x that the accused would be placed in double jeopardy and that the complaint charges two offenses." On August 16, 1962, over the opposition of the Assistant Provincial Fiscal, the court a quo issued an order quashing the two informations. Said the court:

"After reading the informations in both criminal cases, the Court agrees with counsel that the acts committed by the accused as alleged in the two informations constitute one offense.

"As regards the motion to quash filed in Criminal Case No. 841, the grounds alleged in support thereof are: (1) that the accused would be placed in double jeopardy; and (2) that the criminal complaint charges two offenses. Without discussing the merits of these grounds above-quoted, the Court believes that the information filed in Criminal Case No. 841 should be dismissed or quashed for the reason that the offense charged therein is already absorbed in the offense charged in Criminal Case No. 823."

Thus, the dispositive portion of the order reads:

"WHEREFORE, it is the opinion of this Court that the information in Criminal Case No. 823 which charges only unjust vexation or physical injuries should be quashed for the reason that the same is within the original jurisdiction of the Justice of the Peace. And, as to the information in Criminal Case No. 841, the same should likewise be quashed on the ground that the acts complained of is already included in Criminal Case No. 823."

From this order, the Government interposed the present appeal.

Stated differently in the rationale of its order, the court a quo quashed Criminal Case No. 823 on the following ground: That "while the offense is designated as direct assault, nevertheless the main allegations of the information may at most constitute unjust vexation for the reason that an important element of the crime of direct assault is conspicuously absent in the information. This essential element is the knowledge of the accused that the victim is a person in authority. x x x This being the case and since x x x sufficient allegations are contained in the information in question to hold the accused responsible for the offense, the Court believes that the information is sufficient in substance to at least constitute unjust vexation or physical injuries."

Direct assault is committed "by any person or persons who, without a public uprising, x x x shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance." (See Art. 148, Revised Penal Code.)

By express provision of law (Com. Act No. 578, now part of Article 152 of the Revised Penal Code, as amended by Republic Act No. 1978), "teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities shall be deemed persons in authority, in applying the provisions of Article 148." This special classification is obviously intended to give teachers protection, dignity, and respect while in the performance of their official duties. The lower court, however, dismissed the information on the ground that there is no express allegation in the information that the accused had knowledge that the person attacked was a person in authority. This is clearly erroneous.

Complainant was a teacher. The information sufficiently alleges that the accused knew that fact, since she was in her classroom and engaged in the performance of her duties. He therefore knew that she was a person in authority, as she was so by specific provision of law. It matters not that such knowledge on his part is not expressly alleged, complainant's status as a person in authority being a matter of law and not of fact, ignorance whereof could not excuse non-compliance on his part (Article 3, Civil Code). This article applies to all kinds of domestic laws, whether civil or penal (*De Luna vs. Linatoc*, 74 Phil. 15) and whether substantive or remedial (*Zulueta vs. Zulueta*, 1 Phil. 254) for reasons of expediency, policy and necessity.

With respect to the dismissal of the information for Acts of Lasciviousness, we agree with the conclusion reached by the court a quo. Although it is true that the same acts may constitute more than one offense, we are of the opinion, upon an examination of the events which gave rise to the filing of the two aforementioned informations, that the offense of Acts of Lasciviousness does not appear to have been committed at all.

"It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of article 439 (now article 336) of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover." (*U.S. vs. Gomez*, 30 Phil. 22, 25).

The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. In the instant case, considering the manner, place and time under which the acts complained of were done, even as alleged in the information itself, lewd designs can hardly be attributed to accused. The factual setting, i.e., a schoolroom in the presence of complainant's students and within hearing distance of her co-teachers, rules out a conclusion that the accused was actuated by a lustful design or purpose or that his conduct was lewd or lascivious. It may be that he did embrace the girl and kiss her but this of itself would not necessarily bring the case within the provision of Article 336 of the Revised Penal Code.

Wherefore, the order of the court a quo quashing the information for Direct Assault is hereby set aside and this case is remanded to the lower court for trial on the merits; and with respect to the dismissal of the information for Acts of Lasciviousness, the same is hereby affirmed. No pronouncement as to costs.

Dizon, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Reyes, J., on official leave.

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