

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. FAUSTINO RIVERA, DEFENDANT AND APPELLEE.

G.R. Nos. 38215, 38216. December 22, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal filed by the Attorney-General from a judgment of the Court of First Instance of Tayabas sustaining demurrers to the two amended informations and dismissing the cases filed against the appellee Faustino Rivera. The amended information in G. R. No. 38215 is as follows:

"El Fiscal Provincial que suscribe, acusa a Faustino Rivera, del delito de 'inculpacion de un inocente', previsto y castigado en el articulo 363 delCodigo Penal Revisado, cometido como sigue:

"Que en o hacia el dia 23 de junio de 1932, en el Municipio de Lucena, Provincia de Tayabas, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado, el referido acusado Faustino Rivera voluntaria, ilegal y maliciosamente ejecuto un acto que directamente tendio a inculpar a Domingo Vito la comision de un delito de hurto siendo este inocente de dicho delito, consistiendo el acto ejecutado por el acusado en la presentacion de una denuncia por escrito y bajo juramento en el Juzgado de Paz de Lucena, Tayabas (causa criminal No. 6543), acusando, falsamente y sin causa probable alguna, a Domingo Vito de dicho delito, causa que fue sobreseida definitivamente por falta de pruebas. Con infraccion de la ley."

The amended information in G. R. No. 38216 is as follows:

"El Fiscal Provincial que suscribe, acusa a Faustino Rivera, del delito de 'inculpacion de un inocente', previsto y castigado en el articulo 363 delCodigo Penal Revisado, cometido como sigue:

"Que en o hacia el dia 23 de junio de 1932, en el Municipio de Lucena, Provincia de Tayabas, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado, el referido acusado Faustino Rivera voluntaria, ilegal y maliciosamente ejecuto un acto que directamente tendio a inculpar a Felisa Moreno la comision de un delito de hurto siendo esta inocente de dicho delito, consistiendo el acto ejecutado por el acusado en la presentacion de una denuncia por escrito y bajo juramento en el Juzgado de Paz de Lucena, Tayabas (causa criminal No. 6543), acusando, falsamente y sin causa probable alguna, a Felisa Moreno de dicho delito, causa que fue sobreseida definitivamente por falta de pruebas. Con infraccion de la ley."

To these informations the defendant interposed a single demurrer alleging that the facts averred in said informations do not constitute the crime defined and punished by article 363 of the Revised Penal Code. The court below heard the two cases together and sustained the demurrer. Upon the Government's declining to amend the cases were dismissed, and this appeal brought.

The appellant makes the following assignments of error:

"1. In not holding that the facts alleged in the informations filed in these two cases properly fall under article 363 of the Revised Penal Code; and

"2. In sustaining the demurrer interposed to said informations and in dismissing both of these cases."

It appears from the record in criminal case No. 6543 of the justice of the peace of Lucena, Tayabas, that on June 23, 1932, the defendant-appellee Faustino Rivera signed and swore to a complaint (Exhibit A) before said justice of the peace which is as follows:

"The undersigned accuses Domingo Vito and Felisa Moreno, of the crime of theft, committed as follows:

"That on or about the 22 day of June, 1932, in the municipality of Lucena, Province of Tayabas, Philippine Islands, and within the jurisdiction of this court, the said accused, conspiring and confederating together, willfully, unlawfully and feloniously, without the use of force upon things, took and carried away, one white American suit, containing one eye glass, to the value of P30, and one buntal hat, valued at P3, two buttons at P3 each, total value, is P39, to the prejudice of the undersigned.

"Act committed is contrary to the statute in such cases made and provided:

"Witnesses:

"1. NICANOR ZOLETA

"2. Sgt. RANAS, Q.

"(Fdo.) FAUSTINO RIVERA

"Subscribed and sworn to before me this 23d day of June, 1932, in Lucena, Tayabas.

"(Fdo.)

FEDERICO M. UNSON

"Justice of the Peace"

On June 29, 1932, the justice of the peace entered the following decision (omitting the caption):

"Comparecen los acusados Domingo Vito y Felisa Moreno, ambos vec. de Lucena, Tayabas, acompañados de sus abogados. Estos hicieron constar no culpables. Oídas las pruebas de los testigos de cargo el Juzgado sobresee el asunto por falta de pruebas con costas de oficio.

"Lucena, junio 29, 1932.

"Asi se ordena.

"(Fdo.)

FEDERICO M. UNSON

"Juez de Paz de Lucena"

After the justice of the peace rendered his decision on June 29, 1932, dismissing the complaint filed against Domingo Vito and Felisa Moreno, the latter filed separate complaints against Faustino Rivera before the same justice, charging Rivera with the offense of incriminating an innocent person (article 363 of the Revised Penal

Code) by the act of filing the said information charging them with the crime of theft. The defendant raised the same question and objection which he repeated in the Court of First Instance on appeal, namely, that the facts alleged did not fall under the condemnation of article 363 of the Revised Penal Code.

There is no doubt that the facts alleged in the informations above-quoted fall within the definition of the offense of "acusacion" or "denuncia falsa" which is contained in article 326 of the *Codigo Penal*, which was superseded on January 1, 1932, by the Revised Penal Code.

This article is as follows:

"Art. 326. Se comete el delito de acusacion o denuncia falsa imputando falsamente a alguna persona hechos que, si fueren ciertos constituirian delito de los que dan lugar a procedimiento de oficio, si esta imputacion se hiciere ante funcionario administrativo o judicial que por razon de su cargo debiera proceder a su averiguacion o castigo.

"No se procedera, sin embargo, contra el denunciador o acusador sino en virtud de sentencia firme o auto, tambien firme, de sobreseimiento del tribunal que hubiere conocido del delito imputado.

"Este mandara proceder de oficio contra el denunciador o acusador, siempre que de la causa principal resultaren meritos bastantes para abrir el nuevo proceso."

Article 326 of the *Codigo Penal* does not appear in the Revised Penal Code, which contains no offense denominated "acusacion o denuncia falsa" or its equivalent. But the Solicitor-General contends that article 363 of the Revised Penal Code should be construed to embrace the crime of false accusation or complaint as formerly penalized under article 326 of the *Codigo Penal*.

Article 363 in the Spanish text which is decisive is as follows, under the heading of "Asechanzas Inculpatorias":

"Art. 363. Inculpacion de un inocente.—El que, de cualquier manera que no constituyere falso testimonio, ejecutare un acto que tienda directamente a inculpar o imputar a un inocente la comision de un delito, sera castigado con la pena de arresto mayor."

As article 363 of the Revised Penal Code is new and this is the first case before the court calling for its interpretation, a comparison of the article with article 326 of the former Penal Code seems expedient in view of the argument of the Government that the former "is a reproduction of both the crime of false accusation or complaint and the crime of calumny described under said article 326 and article 452 of the old Penal Code."

In passing it may be stated that if article 363 of the Revised Penal Code could be construed to include article 452 of the old Penal Code it would have no application to the case that we are considering because article 452 of the old Penal Code which is as follows:

Art. 452. Calumny is the false imputation of a crime upon which a prosecution might be instituted by the government of its own motion." does not refer to false accusations or denuncias made before an administrative or judicial officer whose duty it is to investigate or punish such crime.

Comparing now article 363 of the Revised Penal Code with article 326 of the old Penal Code, it will be observed that under article 326 of the former Penal Code, the gravamen of the offense is the imputation itself when made before an administrative or judicial officer, whereas in article 363 of the Revised Penal Code the gravamen of the offense is performing an act which "tends directly" to such an imputation. Article 326 of the old Penal Code punishes false prosecutions whereas article 363 of the Revised Penal Code punishes any act which may tend directly to cause a false prosecution.

It is well settled law that where the text of a statute is clear, it is improper to resort to a caption or title to make it

obscure. Such secondary sources may be resorted to in order to remove, not to create doubt. (Cf. *People vs. Yabut*, 58 Phil., 499.) In the present case we think it proper to call attention to the title immediately preceding article 363 of the Revised Penal Code which is as follows: "Asechanzas Inculpatorias", as throwing some light on the classes of acts which tend directly to lead to false prosecutions. The word asechanza, as defined in standard dictionaries, means as follows:

"Intriga, lazo, red, zancadilla, tranquila, amaño, engaño, artificio, trama, treta, especie de maquinacion urdida, de celada dispuesta contra alguno, bien sea para perderlo enteramente, bien para jugarle (sin hundirlo) alguna mala pasada. Engaño o artificio para hacer daño a otro. Usase, por lo comun, en el plural, asechanzas. Accion y efecto de asechar." It seems to us a forced extension of the term asechanza to bring a formal criminal complaint within the conception of intriga, engaño, artificio, etc. It seems the more reasonable and sensible interpretation to limit article 363 of the Revised Penal Code to acts of "planting" evidence and the like, which do not in themselves constitute false prosecutions but tend directly to cause false prosecutions.

It is a well settled rule that statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. (*Lau Ow Bew vs. United States*, 144 U. S., 47, 59; 36 Law. ed., 340, 344.)

It is to be noted that article 326 of the old Penal Code contains the provision that the accuser could be prosecuted only on the order of the court, when the court was convinced upon the trial of the principal cause that there was sufficient basis for a charge of false accusation. Article 363 of the Revised Penal Code contains no such safeguard. If we extended said article by interpretation to administrative and judicial proceedings, it is apparent that we would open the door to a flood of prosecutions in cases where the defendants were acquitted. There is no reason to believe that the Legislature intended such a result.

The judgment below is affirmed with costs de officio.

Avanceña, C. J., Street, Malcolm, Villa-Real, Hull, and Imperial JJ., concur.
Abad Santos, J., concurs in the result.

CONCURRING IN THE RESULT

DIAZ, J.:

I concur in the result. The acts committed by the defendant-appellee according to the version thereof given in the majority opinion do not constitute the crime of incrimination of an innocent person as defined and penalized in article 363 of the Revised Penal Code, but that of libel by means of writings as defined and penalized in article 355 in connection with article 353 of the said Code, or that of false testimony in one of its forms stated in article 183, depending upon the circumstances present during the commission thereof. In the first case, all the essential elements of the said crime are present, to wit: (1) malicious imputation of a crime, which is that of theft, (2) committed by means of writing, and (3) with publicity, inasmuch as the defendant-appellee necessarily gave publicity to such imputation, which was found to be untrue, when he delivered his written charges falsely accusing Felisa Moreno and Domingo Vito of the crime of theft, to the justice of the peace of Lucena, Tayabas. In the latter case, the only thing to be proven is whether or not the defendant acted knowingly therein. But under the terms of the informations filed in these cases, neither the crime of libel nor that of false testimony could be proven, nor could the accused be found guilty of the aforesaid crimes in view of the fact that the informations in question are not in accordance with the law. I am compelled to express this opinion in order to offset any belief to

the effect that the defendant-appellee is not liable.

DISSENTING

VICKERS, J.:

I dissent.

The facts alleged in the informations in question constitute the crime of perjury as defined and punished in article 183 of the Revised Penal Code, because it is charged that the defendant falsely and maliciously accused the offended party in a verified complaint of the crime of theft. With respect to the nature of the offense contemplated by article 363, I cannot agree to restricting: it as proposed in the majority opinion, because when the article refers to "any act not constituting perjury" it is clear that it is not limited to "planting evidence" or similar acts. The effect of the majority opinion is that a person may falsely and maliciously accuse another of a crime in a complaint under oath without incurring in any criminal responsibility. If he should publicly make the same statements orally or in writing he would be guilty of slander or libel, but because he made oath to his statements and filed them in court he is exempt from criminal responsibility, no matter how false and malicious his accusation may have been. I cannot believe that such was the-intention of the Legislature. The suggestion is unwarranted that the victim of a crime will be deterred from denouncing the perpetrator for fear of being prosecuted himself in case the person accused of committing the crime should be acquitted. It must be alleged and proved that the original accusation was false and malicious.

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