

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. VICTOR TAYCO, DEFENDANT AND APPELLEE.*G.R. Nos. 48707-48709. December 05, 1941*

Ponente: OZAETA, J.

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OZAETA, J.:

The Solicitor General moves to dismiss the appeal interposed by the City Fiscal of Manila from the order of the Court of First Instance dismissing the three above-numbered cases on the ground that the offense complained of had prescribed.

The offense in question is unjust vexation alleged to have been committed by the defendant Victor Tayco against Marcelina Alcacetas, Flora Carreon and Rosalina Valenzuela on May 5, May 6, and May 2 and May 6, 1941, respectively. The offended parties complained to the City Fiscal on May 24, 1941, but the City Fiscal's office did not file the corresponding information in the Municipal Court until July 10, 1941, that is to say, more than two months after the commission and discovery of the offense. The Municipal Court denied defendant's motion to quash, but upon appeal the Court of First Instance (Judge Jose R. Carlos presiding) dismissed the three cases, and the City Fiscal appealed to this Court.

Unjust vexation is classified as a light offense, it being punished under the second paragraph of article 287 of the Revised Penal Code with arresto menor or a fine ranging from P5 to P200, or both. Under article 90 of the same Code, light offenses prescribe in two months; and article 91 provides that "the period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him."

We gather from the order of dismissal appealed from that the contention of the City Fiscal is that the running of the prescriptive period was interrupted from the time the offended parties reported the offense to his office on May 24, 1941. We agree with the lower court and the Solicitor General that such contention is untenable. Section 2465 of the Revised Administrative Code, upon which the City Fiscal relies, requires him to investigate "all charges of crimes, misdemeanors, and violations of ordinances, and have the necessary informations or complaints prepared or made against the persons accused." From this it is claimed by the City Fiscal that he has the power to conduct a preliminary investigation like a justice of the peace, and that the lodging of a complaint in his office by the offended party is like the filing of a complaint in a justice of the peace court. But under article 91 of the Revised Penal Code, the running of the period of prescription is interrupted not by the act of the offended party in reporting the offense to the fiscal but by the filing of the complaint or information. Said article further provides that the period of prescription shall commence to run again when the proceedings initiated by the filing of the complaint or information terminate without the accused being convicted or acquitted. Thus, it is clear that the complaint or information referred to in article 91 is that which is filed in the proper court and not the denuncia or accusation lodged by the offended party in the City Fiscal's office. It is needless to add that such accusation in

the City Fiscal's office cannot end there in the acquittal or conviction of the accused.

We consider the Solicitor General's motion to dismiss the appeal as a brief on the merit; and since the result is favorable to the defendant-appellee, we deem it unnecessary to hear the latter.

The order of dismissal entered by the court below is affirmed and the appeal herein is dismissed for lack of merit, with costs de oficio. So ordered.

Abad Santos, Diaz, Moran, and Horrilleno, JJ., concur.

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