1 Phil. 109

[G.R. No. 424. January 27, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MARCOSA PENALOSA AND ENRIQUE RODRIGUEZ, DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

Article 475 of the prevailing Penal Code provides as follows:

> "Any minor who shall contract marriage without the consent of his or her parents or of the persons who for such purpose stand in their stead shall be punished with *prison correctional* in its minimum and medium degrees."

The accused were convicted in the lower court for the violation of this article, it appearing from the evidence adduced that the accused, Marcosa Pefialosa, was not 21 years of age on the 3d day of May, 1901, when she married the codefendant, and that she contracted the marriage without the consent of her father.

Should the judgment appealed from be affirmed if the woman was in fact less than 21 years of age, without taking into consideration what was her belief concerning her age? Many instances can be called to mind in which there may exist an error in good faith concerning this point. A man who is about to marry and is ignorant of his exact age seeks and obtains a certified copy of the registry of his baptism. From this it appears that he was born twenty-one years before the 1st day of June, let us say. He marries on the 15th day of June. It develops later that. the person who took the copy of the registry of baptism read July as June, and as a matter of fact the man in question did not complete his twenty-one years until the 1st day of July, fifteen days after his marriage. Can such a one be convicted of a violation of article 475? It would seem that this case is included within those of the article. He was in fact a minor when he married, and he married without the consent of his parents.

It is true that so far as the parent is concerned the offense has been committed, but can the same be said with reference to the State in the absence of a voluntary violation of the law? Article 1 of the Code does not contain the words "with malice" that are to be found in the Code of 1822; nevertheless Pacheco, the eminent commentator, has said that those words are included in the word "voluntary" (*El Codigo Penal Concordado y Gomentado*, Vol. I, folio 74, third edition); and he states positively that crime can not exist without intent.

Other commentators, without being in entire conformity with Pacheco, nevertheless are agreed up to a certain point. Groizard says: "Such is the general rule; so it is ordinarily." (Codigo Penal de 1870, Vol. I, folio 37.) Viada says that "in the majority of cases, in the absence of intent there has been no crime; but that there can exist in some cases the latter without the former." (Vol. I, Codigo Penal Reformado de 1870, folio 16.) Silvela says : "In effect it suffices to remember the first article, which states that where there is no intent there is no crime, * * * in order to assert without fear of mistake that in our Code the substance of a crime does not exist if there is not a deed, an act which falls within the sphere of ethics, if there is not a moral wrong." (Vol. 2, Derecho Penal, folio 169.)

The theory that the absence of the words "with malice" in the prevailing Code has this effect is supported by the provisions of article 568 which says: "He who by reckless negligence commits an act which would constitute a grave crime if malice were present shall be punished," etc.

The Supreme Court in several successive sentences has followed the same doctrine: "It is indispensable that this (action) in order to constitute a crime should carry with it all the malice which the volition and intention to cause the evil which may be the object of the said crime suppose." (Judgment of May 31, 1882.)

In a cause for falsity the facts involved were that the defendant had married "before the municipal judge of the pueblo of Eubete without other ceremony than the simple manifestation and expression of his wishes and those of the woman Leonor with whom he married before said municipal judge; that relying upon that, on account of his ignorance and lack of instruction, on the 27th of June, 1882, and the 5th of April, 1884, in the municipal court of the pueblo of Polopos he registered as legitimate children his sons, Jose and Emilio, the offspring of the illicit union of the defendant and Leonor Gonzalez." For the crime of falsity committed by reckless negligence the Criminal Audiencia of Albufiol condemned the said defendant to the penalty of four months and one day of *arresto mayor*. The Supreme Court annulled said sentence "considering that whatever might be the civil effects of the

registration of his three sons entered by the accused in the Civil and Parochial Kegisters, it can not partake of the nature of a crime for lack of the necessary element of volition or intent to offend, essential to every punishable act or omission; neither did he act with negligence." (Judgment of March 16, 1892.)

In a cause prosecuted against the Chinese Sy-Ticco and against Don Guillermo Partier, in the court of Quiapo, for falsification of trade-marks, the Criminal Chamber of the Audiencia of Manila condemned the Chinaman to two years and some months of *presidio correccional*, and Partier to one year and some months of similar imprisonment. A writ of error was sued out in the name of Partier. The Supreme Court annulled this sentence, "considering that the moral element of the crime, or, in other words, existence or nonexistence of intent and malice in the commission of an act designated and punished by the law as criminal is essentially a question of fact for the exclusive judgment and determination of the trial court."

"Considering that the act charged against the accused, Guillermo Partier, of having printed in his lithographic establishment the trade-mark of the cigarette packages of the Insular factory by virtue of a supposed order of the owner of said factory, to whose injury the Chinaman Abelardo Zacarias Sy-Ticco ordered him to do the said fraudulent printing, can not be considered (from the facts declared proved in the final sentence of acquittal of the Court of First Instance, accepted in its entirety and without any addition by the Appellate Court) as constituting intentional participation or cooperation in deed of falsification and defraudation committed by the former, since it does not appear in any part of the sentence that Partier was in connivance with Sy-Ticco nor that he had any reason to suspect the true character of him who, styling himself the representative of Seffor Santa Marina, the owner of the La Insular factory, gave him the order to print the trade-mark of this factory on the packages, which were to be used to hold cigarettes." (Judgment of December 30, 1896.)

The judgment of October 4, 1893, is of the same tenor. It is not necessary to hold in this action that no crime mentioned in the Code can exist without intent. It suffices for the present to decide, as we do decide, that one can not be convicted under article 475 when by reason of a mistake of fact there does not exist the intention to commit the crime.

It remains for us to apply this principle to the facts of the present case. The defendant has stated that she believed that she was born in 1879; that so her parents had given her to understand ever since her tenderest age; that she had not asked them concerning her age because her father had given her to so understand since her childhood. Her father was

present in the court room as the complaining witness. If his daughter was deviating from the truth it would have been an easy matter for him to have testified denying the truth of what she had stated. It is evident that he was interested in the conviction of his daughter, and the fact that the complaining witness did not contradict her obliges us to accept as true the statements of the witness. Being true, they disclose that she acted under a mistake of fact; that there was no intention on her part to commit the crime provided for and punished in article 475. As for the husband, it has been proved that two days before the marriage was celebrated he received a letter from the woman in which she said that she was 21 years of age. This letter the defendant showed to the clergyman who married them. The woman when the marriage ceremony was performed took an oath before the cleryman, in the presence of her husband, that she was 21 years of age. The defendant testifies that he had no suspicion that the woman was a minor. This statement has not been contradicted and we consider that it suffices to demonstrate that the defendant acted under a mistake of fact, and in conformity with the principle laid down in this opinion he has not been guilty of a violation of article 475 in connection tion with article 13, No. 3, nor in any other manner.

The conviction of the defendants in accordance with article 568, together with article 29 of General Orders, No. 58, has not been prayed for, and even if it had been we do not consider the evidence sufficient to sustain a conviction in accordance with this article. Her husband had the right to accept the sworn statement of the woman. The only person whom she could ask for information was her father, and he had told her her age repeatedly.

For the reasons above set forth' the sentence of the lower court is reversed with reference to both defendants, acquitting them freely with costs of suit *de oficio*.

It is so ordered.

Arellano, C.J., Cooper, Torres, and *Mapa, JJ.,* concur.

Ladd, J., did not sit in this case.

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