

[G.R. No. 1101. March 16, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ISAAC BAILOSES, DEFENDANT AND APPELLANT.

D E C I S I O N

LADD, J.:

The offense of which the defendant has been convicted is that termed *abusos deshonestos*, defined in article 439 of the Code. There appears to be no dispute as to the facts. The prosecuting witness, Saturnina Emitterio, owed the defendant, who was the president of the pueblo, a peso. The defendant sent several policemen to her house to arrest her. They brought her to the defendant's house, where, after beating her with a stick, the defendant compelled her to take off all her clothes and dance before himself and many oilier persons. Further details of what occurred are related by the witnesses, but it is not necessary to state them.

It is claimed by counsel for the defendant that these facts do not show the commission of the offense of *abusos deshonestos*, because the defendant was actuated in what he did not by libidinous motives but by the desire to punish the prosecuting witness for not returning the peso.

We need not determine the abstract question whether in a cast; where the sole motive of acts such as those under consideration appeared to be anger, curiosity, or the like, this particular crime of *abusos deshonestos* could be said to be committed. We can not so interpret the facts of the present case. It appears to have been assumed by the court below in its judgment that the defendant's purpose was to take revenge upon the prosecuting witness for her failure to pay him, and that may doubtless have been one motive, and it may even be admitted that it was the dominating motive of his conduct. Still we can not believe that there was no admixture of lasciviousness in the thoughts and purposes of a man avlio could devise such a method as this defendant did to exact satisfaction from a woman for the

nonpayment of a debt. And we are therefore of opinion that, even if the facts are to be viewed from a subjective as well as an objective standpoint, the offense of *abusos deshonestos* may properly be predicated upon them.

It is further claimed by counsel for the defendant that the fact that the complaint was not sworn to by the prosecuting witness vitiates all the proceedings. Without considering what might be the consequences of such a defect in the complaint if neither cured nor waived, it is sufficient to say that here the defect was both cured and waived—waived because no objection was taken at the trial, and cured because the complaint, having been adopted by the provincial fiscal in a writing signed by him and filed in court, may be regarded for all material purposes as an information under General Orders, No. 58, section 6.

The judgment is affirmed with costs, and the cause will be returned to the court below for the execution of such judgment. So ordered.

Arellano, C. J., Cooper, Willard, and Mapa, JJ., concur.

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