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NOTES and COMMENTS

THE ENFORCEMENT OF CIVIL LIABILITY ARISING FROM CRIMINAL LIABILITY

Article 100 of the Revised Penal Code provides that "Every person criminally liable for a felony is also civilly liable." How is this civil liability to be made effective? With regard to the crimes of adultery, concubinage, and libel, the Code expressly authorizes the institution of the civil and criminal actions simultaneously or separately (Arts. 345 and 360, Revised Penal Code). As to all other crimes, Philippine jurisprudence, applying the provisions of the Spanish Law of Criminal Procedure of 1882 (the application of which is impliedly recognized by Sec. 107 of G. O. No. 58, as supplementary to said G. O. No. 58), has laid down the following doctrines:

First—The civil liability of the accused should be determined in the criminal action, unless the injured party expressly waives such liability or reserves the right to have the civil damages determined in a separate action. (Art. 112, Spanish Law of Criminal Procedure; Rakes v. Atlantic Gulf and Pacific Co., 7 Phil., 359; Francisco v. Onrubia, 46 Phil., 327).

Second—If the right to bring the civil case has been reserved, the injured party will be allowed to institute the same only when the judgment in the criminal action is one of conviction, or in case the accused is acquitted, if the complaint is based on some other fact or ground different from the criminal act. (Francisco v. Onrubia, *supra;* Almeida, *et. al. v.* Abarroa, 8 Phil., 178; Wise v. Larrion, 45 Phil. 314.)

Third—The civil action for damages arising out of a felony may be brought before the criminal action; i. e., the prosecution of the criminal action to successful conviction is not a condition precedent to the institution of the civil action.[1] (Alba v. Acuña and Frial, 53 Phil., 387; Francisco v. Onrubia, 46 Phil. 327.)

Fourth—If after the commencement of the civil action, the criminal action is instituted, the former shall be stayed pending final judgment of conviction in the latter. (Alba v. Acuña and Frial, *supra*.)

To these rules, the Supreme Court, in the case of Tolentino v. Carlos (R. G. No. 46180, August 30, 1938, see page 169), has recently added another, to wit: *The civil action founded on the same facts which are made the basis of the criminal proceedings, may not be instituted during the pendency of such criminal proceedings.* The facts of this case are briefly as follows: On February 11, 1938, an information was filed against Tolentino, postmaster of Baguio, for the embezzlement of funds under his official custody, totalling ₱27,061.90. On February 12, 1938, the Fiscal instituted against said postmaster a civil case with the object of recovering from him the amounts embezzled. In view of the representations made in the complaint to the effect that the defendant was disposing or attempting to dispose of his properties to defraud the Government, the trial judge issued an order for the attachment of the properties of the defendant. Tolentino thereupon instituted this certiorari case, challenging the authority of the trial court issue the order of attachment. He argued that since the civil liability sought to be enforced in the civil case arose out of the alleged embezzlement, the said civil case could not be maintained until after final judgment of conviction was entered in the criminal proceeding, in view of Art. 114 (*infra*) of the Spanish Law of Criminal Procedure. The petitioner contended that the complaint alleged no cause of action, and the Government therefore could not obtain the order of attachment.

The Supreme Court, in denying the petition, held that Art. 114 of the Spanish Law of Criminal Procedure prohibits the *commencement* of a civil proceeding based on the same facts which are the basis of the criminal action, before final determi-

[1] *Cf.*, Guevara, Philippine Criminal Science, p. 209; Commentaries on the Revised Penal Code, p. 173.

nation of the criminal action; but that in this case, the civil action against Tolentino was independent of the criminal responsibility incident to the commission of the embezzlement. Rather, the basis of the civil case was the obligation *ex lege* of the petitioner under Sec. 633 of the Administrative Code.[2]

From this reasoning of the Court, it is evident that had the civil action been based on the same facts as those constituting the felony, the civil action could not have been instituted and the writ of attachment of the properties of the defendant could not have been secured. Is this decision in accordance with law? Is it in consonance with justice? In the case of Orbeta v. Sotto (58 Phil., 505), the injured party duly appeared and testified for the prosecution as to the amount of damages suffered by him. The trial court awarded him the damages sought, but the accused appealed and during the pendency of the appeal, the offended party commenced the civil action. In connection with the civil action, an order of attachment of the accused's properties was obtained. Certiorari proceedings were instituted by the accused, and the Supreme Court dissolved the writ of attachment on the ground that the civil action was not based on any cause of action. The soundness of this decision cannot be questioned, since the offended party had obviously elected to incorporate the civil action into the criminal proceedings. Returning, however, to the Tolentino case, the following observations are pertinent:

1.—Art. 114 of the Spanish Law of Criminal Procedure provides: "Upon the institution of the criminal proceedings for a felony or misdemeanor, no civil suit on the same act shall be *prosecuted;* and should it have been instituted, it shall be suspended, pending final judgment in the criminal case." (Underscoring supplied.)

Does this provision prohibit the *institution* or the *prosecution* of the civil case?

The dissenting opinion, after pointing out that the civil action against Tolentino is really founded on the criminal responsibility arising out of the crime imputed to him, stated that nevertheless no law prohibits the mere *institution* of the civil case pending final decision of the criminal case, and that what

[2] Sec. 633—"Every officer of the Government of the Philippine Islands whose duties permit or require the possession or custody of the Government funds or property shall be accountable and responsible therefor and for the safekeeping thereof in conformity with the provisions of this law."

Art. 114 of the Law of Criminal Procedure forbids is the *prosecution,* not the mere *institution,* of the civil action. The Spanish text of the pertinent portion of the law under scrutiny, reads: "* * * no podra *seguirse* pleito sobre el mismo hecho * * *", which is translated into English in Alba v. Acuña and Frial, *supra,* as follows: * ** no civil suit on the same act shall be *prosecuted* * * *." (Underscoring supplied.) According to the dissent, the law permits the institution of the civil case; but after its institution, it shall be held in abeyance until after judgment of conviction in the criminal proceedings. The Supreme Court, however, has given the law a different—and controlling—interpretation, which, it is modestly submitted, is apparently not supported by the language of the law.

2.—In the criminal action, the injured party cannot secure the attachment of the property of the accused to secure the payment of any pecuniary liability that may be adjudged against the latter, since the remedy of attachment provided for in Arts. 412, *et seq* of the Code of Civil Procedure is not available as an aid in the enforcement of the civil liability incident to the prosecution for a crime (U. S. v. Namit, 38 Phil., 926; People v. Moreno, 33 O. G., 2743.). The effect, therefore, of the ruling of the Supreme Court in the Tolentino case is to leave the injured party absolutely without means to prevent the despoliation of the assets of the person criminally and civilly responsible by said person himself. A murder is committed, for example, and the zealous officers of the law institute the criminal action. Of course, the injured party rarely, if ever, can commence the civil case before the institution of the criminal action. During the pendency of the criminal case, the party granted by express provision of law the right of reparation, indemnification, and restitution, has no remedy at all to insure that at the termination of the criminal case the assets of the accused are still substantially intact.

The reason advanced by the Supreme Court, thru Mr. Justice Villa-Real, in the case of Alba v. Acuña and Frial, *supra,* for ruling that the civil action may be instituted before the commencement of the criminal proceedings, was that if the Court held otherwise, "the right of the injured party to indemnity would be a myth, and justice a farce, for the guilty party would be able to dispose of his property or of the articles robbed, stolen, or embezzled pending judgment of condemnation in the criminal

case." This same argument could very well be used now against the holding of the Court in the Tolentino case.

Unless, therefore, it is desirable that Art. 100 of the Revised Penal Code be rendered without effect, there is urgent need of legislation expressly empowering the institution of a civil suit even before final judgment in the criminal case, provided said civil suit is stayed pending entry of the judgment of conviction in the criminal case; or of a law giving the offended party in the criminal case the right to obtain an order of attachment of the properties of the accused.

RAFAEL C. CLIMACO

THE PROSECUTION OF PRIVATE CRIMES

In the case of Escuerra v. Judge of the Court of First Instance (G. R. No. 46039, August 30, 1938, see page 173) the Supreme Court held that a complaint for acts of lasciviousness presented by the father of the offended girl seventeen years old was sufficient to confer jurisdiction to the Court of First Instance to try the case. Three complaints were filed in this case, the first by the chief of police, the second by the father, and the third by the minor seventeen years old. Upon the motion of the provincial fiscal the first complaint was dismissed as the complaint was not presented by either the offended party herself, her parents, grandparents or guardian. The second information was dismissed by the judge *mutuo proprio* after the defendant had pleaded not guilty as he was of the opinion that the complaint to confer jurisdiction must be presented by the offended party herself. This dismissal was founded upon a recent decision of the Court of Appeals in the case of People v. Mapotol 35 O. G. 1153. To the third complaint signed by the offended party the defendant pleaded double jeopardy and this defense was upheld by the Supreme Court, the Court holding that the second information was valid and that the subsequent complaint placed the defendant in double jeopardy (Sec. 28 G. O. 58).

In People v. Mapotol, *supra*, the facts show that the offended party was a girl seventeen years old. The offender was her father. A complaint was filed by the mother accusing the defendant of acts of lasciviousness. This complaint was later withdrawn as the mother had pardoned the offender. However

subsequently the mother presented a new complaint. The defendant was tried upon this complaint and convicted by the Court of First Instance. Upon appeal the Court of Appeals dismissed the case and held: "The filing of the complaint under this provision (Article 344, Revised Penal Code) is jurisdictional (U. S. v. Narvas 14 Phil. 410; U. S. v. Cruz 20 Phil. 363) and the right to file it is exclusively and successively reposed in the persons mentioned in said provision in the order in which they are named (U. S. v. de la Santa 9 Phil. 22). The law gives the offended person a "preferential right i.e., placing him or her in the first rank for the filing of the complaint although he or she is not of age' (U. S. v. Bautista 40 Phil. 735). The offended girl in the present case is single, seventeen years of age and she does not appear to be incapable nor incompetent to file the complaint upon other lawful motives restrictive of her juridical personality or civil capacity to appear at the hearing. Therefore, she must be the first to file the complaint following the doctrine of U. S. v. Bautista, *supra*. She having failed to do so, the complaint filed by her mother conferred no jurisdiction upon the lower court to try and decide the case."

The ruling of the Court of Appeals in the case is in conflict with what seems to be the settled jurisprudence on the subject of who may bring a complaint for the crimes of rape, acts of lasciviousness, adultery, concubinage and seduction, otherwise known as private crimes. The ruling is based on an unwarranted inference from and a misapplication of the doctrine laid down in U. S. v. Bautista. In fact in a subsequent case the Court of Appeals, itself, held that the complaint subscribed to by the mother of the offended girl who is a minor is valid and in conformity with the spirit of the law (People v. Elca G. R. No. 44123, December 15, 1936).

The law on the subject is found in Article 344 of the Revised Penal Code which provides: "The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented, or pardoned the offended. The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party, or her parents, grandparents, or guardian, nor in any

case, if the offender has been expressly pardoned by the above persons, as the case may be. In cases of seduction, abduction, acts of lasciviousness and rape the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes." This is substantially a reenactment of article 448 of the old Penal Code which have been repealed by Act 1773 which have made rape, acts of lasciviousness adultery, seduction and injuria public crimes. Article 367 of the Revised Penal Code in turn has repealed Act 1773 and thus the status of these crimes as private crimes has been restored.

The manner of prosecuting these offenses forms an exception to the general rule that it is the concern of the State to prosecute and punished all violations of the penal law. This exception is rooted in the deep regard which the law places upon the interest of the aggrieved party and her family in that "their vice or faults, their fame and honor may not be exposed to the public nor to the heated controversies before the courts of justice" (5 Groizard 240).

Consequently the complaint for these offenses may only be presented by those persons enumerated in the law and no other. The Supreme Court of Spain however has held that it may be brought by the step-father or by the father-in-law. "El (sentencia de 7 de Junio, 1887 algo Sentencia de 9 de Nov. 1881) padrastro o padre politico de la estuprada tiene incuestionable derecho a defender en juicio, como cabeza de familia, a la hija de su esposa y á esta como marido y su representante legitimo; por consiguente, ya a nombre de una ó de otra, la representacion por él ostentada en vindicacion de la gravisima ofensa causada á su hija politica no puede rechazarse legalmente" (Sentencia de 7 de Junio, 1887). And again, "es indisputable que se halla comprendido en el texto y espiritu del mismo, pues autorizando para ello al tutor ó curador no se concibe sea su pen samiento rechazar la representacion de que viviendo en compañia de su hijasdra y su madre se halla constituido en jefe de esta familia" (Sentencia de 9 de Noviembre, 1881).

The information filed by persons other than those specifically named does not confer jurisdiction to the court. The requirement is jurisdictional and the defect may be raised at any

time of the proceedings, on appeal or even after final judgment. (U. S. v. Gomes 12 Phil. 279; U. S. v. Narvas 14 Phil. 410; U. S. v. Jayme 24 Phil. 90; U. S. v. Santos 4 Phil. 527; U. S. v. Ortis 19 Phil. 174). Conviction under said information is no bar to a new complaint and the defenses of double jeopardy, previous conviction or acquittal will not lie for the entire proceedings are null and void. (U. S. v. Jayme, *supra*).

The requirement that the complaint must be presented by the aggrieved party is sufficiently complied with when the latter files the complaint in the Justice of the peace court where the usual preliminary investigation is held. The fact that the provincial fiscal (alone) filed an ordinary information in the Court of First Instance is of no importance as the complaint filed in the Justice of the peace court gave the courts jurisdiction to proceed with the cause (U. S. v. Garcia 27 Phil. 254). It is otherwise when the complaint was dismissed in the preliminary investigation for lack of probable cause. The case can not be reopened except upon a new complaint by the offended party and the fiscal is without authority to file a new complaint upon his own responsibility. (Quillatan v. Caruncho, 21 Phil. 400). Where an information was filed by the fiscal, the fact that said information shows upon its face that it was filed "at the instance" of the aggrieved party, does not confer jurisdiction to the court. (U. S. v. Castañares 18 Phil. 210). A complaint subscribed to by the mother is valid though not signed by her (People v. Elca, *supra*).

Although in paragraph 3 of article 344 the persons entitled to bring the action are mentioned disjunctively, said article must be construed as meaning that the right to institute the criminal actions is exclusively and successively reposed in these persons in the order in which they are named, so that none of them has authority to proceed if there is any other person previously mentioned therein with legal capacity to appear and institute the action (U. S. v. de la Santa 9 Phil. 22; II Hidalgo Garcia 350-352; Sentencia de 13 de Octubre, 1890, also Sentencia de 25 de Noviembre, 1896 of the Supreme Court of Spain). The right to institute the action can not be reposed in all of them at one and the same time without giving occasion to grave difficulties in the administration of justice, resulting from the attempt of some of these persons to institute criminal proceedings contrary to the wish and desire of the others. If the offended

party is above the age of majority and is not otherwise disqualified by reason of insanity, imbecility, deafmutism or civil interdiction, she and she alone could file the complaint. (U. S. v. de la Santa, *supra*).

If the offended party is a minor, her parents, grandparents, or guardian in the order in which they are enumerated may present the complaint. It is not only their privilege but their private duty toward the child and their duty toward the State to initiate the prosecution if the circumstances, in their judgment and discretion taking into account the welfare of the child, make the prosecution necessary in order not to allow the commission of such offenses was impunity. And the fact that the complaint was brought by the mother does not militate against the validity of the complaint (U. S. v. Gariboso 25 Phil. 171). The Supreme court of Spain has also held that the complaint filed by the mother of the aggrieved party who is a minor living with her, with the knowledge and without the opposition of the father, is valid. (Sentencia de 25 de Noviembre 1896). The letter of article 344 makes no distinction between the father and the mother and we can reasonably add that the spirit of the provision permits no distinction.

But may the minor, by herself and without the consent of the parents and even against their will iniciate the necessary legal proceedings in order that the case may be heard? Grozard answers this question in the negative (5 Groizard 240). He bases his conclusions upon what he considers to be strong "moral considerations and good reasons within the domestic circle" and on the further ground that, a minor, not being competent to appear before the courts without his personal incapacity being substituted by authority of his parents, cannot by herself and at her instance institute the necessary legal prosecution, and that she must necessarily be represented by one of those persons mentioned in article 344 of the Revised Penal Code.

But our Supreme Court held otherwise in U. S. v. Bautista 40 Phil. 735. Prior to this case there appeared dicta in several cases which might be interpreted as denying to the minor the right to bring the action herself. (See U. S. v. Cruz 20 Phil. 363, U. S. v. Narvas 14 Phil. 410 and U. S. v. Ortis and Regalado 19 Phil. 174). But when the question was for the first time squarely presented in U. S. v. Bautista the Court held that the minor if not otherwise incapacitated may personally bring

the complaint for seduction without the intervention of her parents.

Whether we subscribe to the holding or our Supreme Court in the case, it is nevertheless safe to assume that is reenacting 448 of the Penal Code and the proviso of section 1 of Act 1773, the Philippine Legislature had taken into consideration the interpretation laid down by the Supreme Court in U. S. v. Bautista, *supra,* and that by not making any distinction as to the right of the offended party to bring the action when she is below and when she is above the age of majority, the legislature had acquiesced to said interpretation.

It is paradoxical that Court of Appeals in the case of People v. Mapotol, *supra,* relies on the case of U. S. v. Bautista, *supra,* in holding that if the aggreived party is a minor seventeen years old she and she alone can bring the action. Paradoxical, because throughout the Bautista case the Supreme Court assumed that the right to bring the action in cases of the minority of the offended party belongs to her parents and only after an extended discussion did it hold that, while that is true, the minor may herself bring the action.

An interesting question occurs when the aggrieved party has no parents, grandparents or guardian and she is suffering from some legal disabilities as insanity, imbecility, deafmutism, civil interdiction or others. Who may then bring the action? May it be brought by the provincial fiscal or by a relative of the offended party? Our old Penal Code covers cases of this nature when it provides in par. 3 of article 449: "If the person offended shall be disqualified by reason of non-age or mental incapacity to maintain the suit, and shall furthermore be absolutely destitute, having no parents, grandparents, brothers or sisters, guardians or curator by whom charge may be brought, such charge may be made by the prosecuting officer upon general information." This article was repealed by Act 1773 and our Revised Penal Code which in turn repeals Act 1773 contains no similar provision. While it is true that the Supreme Court of Spain authorized the public prosecutor to file the complaint in such cases, such holdings are based on the expressed provision of the Spanish Penal Code. Our Supreme Court had had no opportunity to pass on this question and it is believed that sections 116 and 117 of our Code of Civil Procedure may be held applicable.

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