

FAMILY TALK

Article II Section 12 of the Constitution provides that the State shall protect and strengthen the family as a basic autonomous social institution. As a policy of the State, it is the duty of the State to fortify the union of the family. The fulfilment of this mandate of the Constitution is exemplified in Art 332 of the Revised Penal Code which seeks to preserve family harmony and ward off scandal.

Article 332 of the Revised Penal Code provides:

No criminal liability, but only civil liability shall result from the commission of the crime of theft, swindling, or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;

2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and

3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.

From here, we will be discussing some matters which to some, have not been made clear yet. The focal points of this article are firstly, the discussions on the effect of death on the relationship by affinity between the husband and blood relatives of his wife (as well as between the wife and blood relatives of her husband). Will the said death, dissolving the spouses' marriage, also end the relationship by affinity and further disqualifies the aforementioned persons from the beneficial application of the subject provision?

Secondly, what crimes will and will not exempt certain erring family members from criminal liability?

In the case of *Intestate of Manolita Gonzales vda. De Carungcong, represented by Mediatrix Carungcong as Administratrix vs. People of the Philippines, et al., Mediatrix Carungcong,*

Mediatrix Carungcong, in her capacity as the duly appointed administratrix of petitioner intestate estate of her deceased mother Manolita Gonzales vda. de Carungcong, filed a complaint-affidavit for estafa against her brother-in-law, William Sato, a Japanese national. It was alleged that the said accused feloniously induced Manolita Gonzales, the owner of the estate and herein deceased, to sign and thumb mark a special power of attorney (in the pretense of presenting a document pertaining to taxes) which authorized the sale, assignment, transfer and disposition of the latter's properties. In relation to this, the accused moved for the dismissal of the case.

EFFECT OF DEATH ON RELATIONSHIP BY AFFINITY AS ABSOLUTORY CAUSE

As a defense against his arrant prosecution, the accused here applies Art 332 of the Revised Penal Code. He cites that he falls under the enumeration of those relatives who shall be exempt from criminal prosecution. Being a relative by affinity, he cannot be held liable for the crime of estafa as stated in the

law. He further counters that the same law makes no distinction that the relationship may not be invoked in case of death of spouse at the time the crime was allegedly committed. Thus, the death of his spouse though dissolved the marriage with the accused, did not on the other hand dissolve the mother-in-law and son-in-law relationship between Sato and his wife's mother, Manolita. He then cannot be removed from the protective mantle of Art 332.

Here, it seems clear that the contention of the accused is tenable. Notwithstanding the fact, that the accused committed estafa, he still must be exempted from criminal liability, being the son-in-law of the deceased and falling from the exceptions provided for by law.

Again, Art 332 provides for an absolatory cause in the crimes of theft, estafa, and malicious mischief. It lessens the responsibility of the offender to civil liability and exonerates him from criminal charges by reason of his relationship to the offended party. Since the spirit of Art 332 is to uphold the solidarity of the family, it is but proper to conclude that "the view that relationship by affinity is not affected by the death of one of the parties to the marriage that created, it goes with the idea of family solidarity and harmony."

EXCEPTION TO THE RULE

But what is more interesting about the quoted case is that, it speaks about a complex crime and not a crime of simple estafa. This will make a variance on our discussion.

While it is true that the absolatory cause under Art 332 only applies to the felonies of theft, swindling and malicious mischief, however, it does not extend when any of the crimes mentioned under Art 332 is perpetrated with another crime, say estafa through falsification.

Regardless of the relationship with the offended party, a person may still be held criminally liable, if he commits a crime other than the crimes stated in the subject provision. The provision only covers the commission of simple theft, estafa and malicious mischief and not complex crimes.

It was known that Sato, the accused, did not only commit simple estafa but rather estafa through falsification of public document, as the real nature of the offense was determined by the facts alleged in the information. As such, Sato cannot avail himself of the absolatory cause provided under the exempting law.

Under the aforementioned provision, only in simple crimes of theft, estafa and malicious mischief committed by the accused against certain family members that the State that cannot hold him criminally liable but subject only to civil liability. However, in case of a complex crime, though they are considered two crimes they are treated only as one, subject to a single criminal prosecution.

Thus in this case, it would be wrong to conceive that to be criminally liable for the complex crime of estafa through falsification of public document, the liability of estafa should be considered separately from the liability for falsification of public document, the latter being a necessary means to commit estafa.

The crime estafa through falsification of public document does not anymore concern private relations of family members which can be acted upon with liberality. Instead, it avers paramount public interest.

Only if Sato, the accused, using the same inducement, let Manolita, the deceased, sign the deed of sale in his favor or in favor of third parties, the crime would have been simple estafa only. Likewise, in case the accused, without any inducement, presented a SPA to Manolita for her signature in guise of a document bearing on her taxes, crime would have only been a simple crime of falsification. These circumstances would have called for the exemption from criminal liability of the accused, having committed only a simple crime and not a complex crime.

Withal, Sato, the accused, could not avail of the beneficial application of ART 332 considering that the crime he committed falls under the nature of a complex crime and not of a simple crime. Also, while it may be true that he is qualified to avail of the exemption by virtue of his relationship by affinity to the accused, still his act warrants no justification.

Even he has been predeceased by his spouse and the cord of relationship by affinity with the mother-in-law still remains as it was not dissolved by his wife's death, the language of Art 332 is clear that only when simple crimes are committed by certain family members that the latter can avail of the exemption. This does not apply to the accused as discussed earlier. He then can be held criminally liable.

To conclude, as we proceed through our lives, our experiences within the family give rise to some of our strongest and most intense feelings. Within the family context lies a contradiction. Although most of us hope for affection, care and support within the family -- a haven in a ruthless world-- the family can also be a place of vehemence and abuse. Like in this case, Sato has been considered a family but his fraudulent act cannot be taken for granted. His inexcusable act constitutes an abuse which cannot be taken lightly. The State then could not simply close its eyes in exchange of preserving family solidarity and harmony.