

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. GUADALUPE ZAPATA AND DALMACIO BONDOC, DEFENDANTS AND APPELLEES.

G. R. No. L-3047. May 16, 1951

Ponente: PADILLA, J.

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PADILLA, J.:

In the Court of First Instance of Pampanga a complaint for adultery was filed by Andres Bondoc against Guadalupe Zapata, his wife, and Dalmacio Bondoc, her paramour, for cohabiting and having repeated sexual intercourse during the period from the year 1946 to 14 March 1947, the date of the filing of the complaint, Dalmacio Bondoc knowing his codefendant to be a married woman (criminal case No. 426). The defendant-wife entered a plea of guilty and was sentenced to suffer four months of *arresto mayor* which penalty she served. In the same court, on 17 September 1948, the offended husband filed another complaint for adulterous acts committed by his wife and her paramour from 15 March 1947 to 17 September 1948, the date of the filing of the second complaint (criminal case No. 735). On 21 February 1949, each of the defendants filed a motion to quash the complaint on the ground that they would be twice put in jeopardy of punishment for the same offense. The trial court upheld the contention of the defendants and quashed the second complaint. From the order sustaining the motions to quash the prosecution has appealed.

The trial court held that the adulterous acts charged in the first and second complaints must be deemed one continuous offense, the defendants in both complaints being the same and identical persons and the two sets of unlawful acts having taken place continuously during the years 1946, 1947 and part of 1948, and "that the acts or two sets of acts that gave rise to the crimes of adultery complained of in both cases constitute one and the same offense, within the scope and meaning of the constitutional provision that 'No person shall be twice put in jeopardy of punishment for the same offense.'"

Adultery is a crime of result and not of tendency, as the Supreme Court of Spain has held (S. 10 December 1945); it is an instantaneous crime which is consummated and exhausted or completed at the moment of the carnal union. Each sexual intercourse constitutes a crime of adultery (Cuello Calon, *Derecho Penal*, Vol. II, p. 569). True, two or more adulterous acts committed by the same defendants are against the same person—the offended husband, the same status—the union of the husband and wife by their marriage, and the same community represented by the State for its interest in maintaining and preserving such status. But this identity of the offended party, status and society does not argue against the commission of the crime of adultery as many times as there were carnal acts consummated, for as long as the status remain unchanged, the nexus undissolved and unbroken, an encroachment or trespass upon that status constitutes a crime. There is no constitutional or legal provision which bars the filing of as many complaints for adultery as there were adulterous acts committed, each constituting one crime.

The notion or concept of a continuous crime has its origin in the juridical fiction favorable to the law transgressors and in many a case against the interest of society (Cuello Calon, *Derecho Penal*, Vol. II, p. 521). For it to exist

there should be plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim (Ibid. p. 520). In the instant case the last unity does not exist, because as already stated the culprits perpetrate the crime in every sexual intercourse and they need not do another or other adulterous acts to consummate it. After the last act of adultery had been committed as charged in the first complaint, the defendants again committed adulterous acts not included in the first complaint and for which the second complaint was filed. It was held by the Supreme Court of Spain that another crime of adultery was committed, if the defendants, after their provisional release during the pendency of the case in which they were later on convicted, had sexual intercourse up to the time when they were sent to prison to serve the penalty imposed upon them (S. 28 February 1906; 76 Jur. Crim. pp. 208-210).

Another reason why a second complaint charging the commission of adulterous acts not included in the first complaint does not constitute a violation of the double jeopardy clause of the constitution is that, if the second complaint places the defendants twice in jeopardy of punishment for the same offense, the adultery committed by the male defendant charged in the second complaint, should he be absolved from, or acquitted of, the first charge upon the evidence that he did not know that his codefendant was a married woman, would remain or go unpunished. The defense set up by him against the first charge upon which he was acquitted would no longer be available, because at the time of the commission of the crime charged in the second complaint, he already knew that this codefendant was a married woman and yet he continued to have carnal knowledge of her. Even if the husband should pardon his adulterous wife, such pardon would not exempt the wife and her paramour from criminal liability for adulterous acts committed after the pardon was granted, because the pardon refers to previous and not to subsequent adulterous acts (Viada [5th ed.] Vol. 5, p. 208; Groizard [2nd ed.] Vol. 5, pp. 57-58).

The order appealed from, which quashed the second complaint for adultery, is hereby reversed and set aside, and the trial court directed to proceed with the trial of the defendants in accordance with law, with costs against the appellees.

Feria, Pablo, Tuason, and Jugo, JJ., concur. Paras, C. J., Bengzon, and Montemayor, JJ., concur in the result.

PARAS, C. J.:

Mr. Justice Reyes voted for the reversal.

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