

EMILIANO CASTRO, JR., PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-22159. July 31, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petitioner, Emiliano Castro y Villanueva - hereinafter referred to as appellant - seeks the review on certiorari of a decision of the Court of Appeals, affirming that of the Court of First Instance of Manila, convicting him of the crime of concubinage, with which he is charged, upon complaint filed by his wife, Flordeliza T. Castro, and sentencing him to an indeterminate penalty ranging from three (3) months and eleven (11) days of arresto mayor to one (1) year, eight (8) months and twenty-one (21) days of prision correccional, and to pay the costs. Not having been apprehended, his co-defendant, Lolita Flojo y Balicanta has not, as yet, been tried.

The Court of Appeals found that, although legally married to the complainant on February 9, 1952 - who was separated from him since 1954 - and their marriage had not been dissolved, appellant had, from about 1956 to 1959, cohabited and had sexual intercourse with his co-defendant, who lived with him, in his house - which used to be his and complainant's matrimonial domicile at 1321-A P. Guevara St., Manila, openly as his wife, as well as presented herself and was presented by appellant as such.

These facts were established by complainant's testimony and that of her sister Sylvia Tanjuan, who were fully corroborated by the birth certificate (Exh. B) and the SSS form (Exh. E) of appellant's co-defendant. Indeed, Exhibit B, which is signed by the latter as Lolita Flojo Castro, shows that on October 7, 1957, she gave birth, at the Far Eastern University Hospital, to a child named Alejandro Flojo Castro, who, she declared, was her "legitimate" son and that of Emiliano Villanueva Castro, appellant herein. At the foot of her signature, she wrote "1321 P. Guevara, Santa Cruz, Manila," which is appellant's address, as her own. Upon the other hand, in her SSS form, she used the same name and address - although it was more specific, by adding the suffix A to the house number - and, apart from naming appellant as her beneficiary, she described him as her "husband", and her mother, Angeles Vda. de Flojo, as her dependent.

Appellant denied, on the witness stand, having had illicit relations with his co-defendant; but, it is clear that his testimony can not prevail over the aforementioned evidence for the prosecution, aside from the circumstance that the findings of fact of the Court of Appeals are conclusive upon us under a petition for review on certiorari, such as the one at bar. Indeed, the issues raised by appellant herein are basically factual, in view of which said petition should not have been given due course. Since, however we have already examined the record, we are satisfied that said issues are devoid of merit.

Thus, appellant maintains, as he did in the trial court and in the Court of Appeals, that there had been condonation or pardon on the part of his wife; but, neither court sustained this pretense. What is more, the conclusions of the Court of Appeals thereon constitute another finding of fact, which is not reviewable by us. Independently of the foregoing, although one letter of the complainant in 1956 - when she seemingly had mere hearsay notion of the

illicit relations between the defendants herein - may not be clear on her position in relation thereto, her letters in 1957 - in which she referred to Lolita Flojo as appellant's "querida" or mistress - and, particularly, her behaviour since 1958, when she became positive about said relations, leave no room for doubt that she had never consented, pardoned or condoned the same. In fact, on May 5, 1959, she even filed a civil action - civil case No. 1957 of the Court of First Instance of Bulacan - against her husband, for legal separation, based upon the illicit relations between the here-in defendants.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against appellant, Emiliano Castro y Villanueva.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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