

PETRONILO LIGTAS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-47498. May 07, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for certiorari to review the decision of the Court of Appeals affirming a judgment of the Court of First Instance of Bohol in Criminal Case No. 785 convicting the accused of adultery as follows:

"WHEREFORE, finding accused Petronilo Ligtas guilty beyond doubt of adultery with the aggravating circumstance of nighttime, he is hereby sentenced to undergo the indeterminate penalty of imprisonment of from TWO (2) YEARS and FOUR (4) MONTHS to FIVE (5) YEARS and SIX (6) months, and the accessory penalties of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage; to indemnify the offended party, Tomas Pigte, the sum of P5,000.00 as moral and exemplary damages; and to pay the costs." [1]

The facts as found by the Court of Appeals are as follows:

"Lucia Estillore was married to the complainant Tomas Pigte on November 26, 1959 (Exh. A). This fact is known to Petronilo Ligtas. On December 14, 1972 at about 8:00 P.M., Tomas and Lucia went to the house of Tomas' sister, Rosal, which is situated near their house. After a short while, Lucia went home when they heard their baby cry. After about three minutes, Tomas followed home. Not finding Lucia in their house, Tomas called for her. There being no response, he went to the bulldozer parked nearby in the possibility that his wife might have gone there to answer the call of nature. When he did not find her there, he went up the bulldozed hill, a distance of about 60 meters. Upon reaching the place, he saw his wife and Petronilo having sexual intercourse. Lucia was standing, pantyless, holding her raised dress, feet spread apart while Petronilo, naked from the waist down, was embracing Lucia and doing the "push and pull" movement. Petronilo's trousers were on a stone on top of which, rested his .38 caliber pistol — Lucia noticed Tomas' presence and instinctively, she pushed Petronilo away who immediately reached for his gun. To save himself, Tomas turned away and went home to get a bolo. Having second thoughts, he cooled off upon reaching his house. The following morning, Tomas confronted his wife. The latter confessed that her illicit relationship with Petronilo had started since 1969 during the absence of Tomas, who was working then in Cebu City." [2]

In the petition, accused-petitioner raises the following assignments of error:

I. THE RESPONDENT COURT OF APPEALS ERRED IN NOT DECLARING EXHIBIT '3' FOR THE DEFENSE WHICH IS ALSO EXHIBIT 'C' FOR THE PROSECUTION AS VALIDLY EXECUTED.

II. THE RESPONDENT COURT OF APPEALS ERRED IN NOT DECLARING THAT THE CONDITIONS FOUND IN SAID EXHIBIT '3' ARE NULL AND VOID THEY BEING AGAINST THE LAW, MORALS AND PUBLIC POLICY.

III. THE RESPONDENT COURT OF APPEALS ERRED IN NOT DECLARING THAT THE REMAINING PORTIONS OF EXHIBIT '3' WHICH ARE NOT AGAINST THE LAW, MORALS, AND PUBLIC POLICY

ARE EFFECTIVE AND ENFORCEABLE.

IV. THE RESPONDENT COURT OF APPEALS ERRED IN NOT DECLARING THAT AS A RESULT OF THE VALID EXECUTION OF EXHIBIT '3' RESPONDENT PEOPLE OF THE PHILIPPINES IS BARRED FROM CRIMINALLY PROSECUTING HEREIN PETITIONER FOR THE PRIVATE CRIME OF ADULTERY."[3]

The main thrust of the petition is that the Court of Appeals erred in affirming the decision of the Court of First Instance of Bohol in failing to consider the affidavit, Exhibit "C", as an absolute or unconditional pardon for which reason petitioner could no longer be prosecuted for adultery. He contends that the conditions of the supposed pardon, namely: "(1) the co-accused Lucia Estillore and her husband-complainant Tomas Pigte will live separately; (2) that offended party Tomas Pigte will relinquish all his rights and prerogatives as husband to Lucia Estillore; (3) that petitioner-Petronilo Ligtas will support complainant's children; and (4) that complainant Tomas Pigte will give up all his duties and rights in rearing all their children," are null and void for being contrary to law, morals and public policy, hence, they could be considered as not written at all. The petitioner then concludes that under the circumstances the affidavit, Exhibit "C" should be considered as an absolute pardon.

The Court finds no merit in the petition.

After the complainant reported the offense that was committed on December 14, 1972 to the Chief of Police the following morning the police prepared the complaint and supporting affidavits. However, as the complainant took pity on his young and his wife besides being financially distressed so it may be difficult for him to prosecute the case, he asked the Chief of Police to hold in abeyance the filing of the case as he had "in mind of giving my wife apology". However, he said that the "projected forgiveness he wanted to grant to his wife and paramour is conditional, that is, he would give pardon to his wife if she lives separately from him and she to assume the duty of supporting their children and that he would relinquish all his rights and prerogatives as her husband." This affidavit was written in English, a language not understood by complainant who is an illiterate and appears on its face to be hastily prepared.[4]

There is no doubt that this is no pardon at all but a mere expression of a desire to pardon borne out of pity and imposing conditions to its grant which no less than petitioner insists is against morals and public policy. That complainant Tomas Pigte relented in his plan to grant pardon to his wife and petitioner is demonstrated by the fact that on December 19, 1972 complainant appeared and swore before the Municipal Judge his complaint for adultery.[5]

In this jurisdiction pardon for adultery and concubinage must come before the institution of the criminal action and both offenders must be pardoned by the offended party if said pardon is to be effective.[6] The pardon can be express or implied. Thus, when the offended party in writing or in an affidavit asserts that he or she is pardoning his or her erring spouse and paramour for their adulterous act this is a case of express pardon.[7] There is implied pardon when the offended party continued to live with his spouse even after the commission of the offense. However such consent or pardon cannot be implied when the offended party allows his wife to continue living in the conjugal home after her arrest only in order to take care of their children.[8]

In the present case there is neither such express or implied pardon. It is obvious that the affidavit that the complainant executed (Exh. C) was a mere declaration of intention to pardon his wife and petitioner. Subsequent acts of the complainant show that he changed his mind and decided to continue with the prosecution of the case.

Although there is no question as to the commission of the offense, the maximum penalty imposed is not correct. The offense of adultery is penalized under Art. 334 of the Revised Penal Code with prision correccional in its medium and maximum period. Applying the Indeterminate Sentence Law while the minimum penalty is within

the proper range, the maximum penalty should be Four (4) years, Nine (9) months and Ten (10) days of prision correccional. And to avoid the penalty imposed being misconstrued to be indefinite, the minimum and maximum penalties should be specified. Thus petitioner is hereby imposed the indeterminate penalty of imprisonment of Two (2) years, and Four (4) months of prision correccional as minimum to Four (4) years, Nine (9) months and Ten (10) days also of prision correccional as maximum.

WHEREFORE, with the above modification as to the maximum penalty, the petition is DISMISSED in all other respects, with costs against petitioner.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Feliciano, and Sarmiento, JJ., concur.

[1] P. 39, Rollo.

[2] Pp. 2-4, CA Decision, page 40, Rollo.

[3] P. 70, Rollo, pp. 2-4 Brief for Petitioner.

[4] Exhibit C, p. 36 & 56, Rollo

[5] Pp. 36-37, Rollo.

[6] People vs. Infante, 57 Phil. 138.

[7] People vs. Mendez, et al. (CA) O.G. 1999.

[8] People vs. Boca (CA) O.G. 2248.

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