

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DORICA MANZANO AND VENANCIO CAPISTRANO, DEFENDANTS AND APPELLANTS.

G.R. No. 11043. November 26, 1915

Ponente: ARAULLO, J.

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ARAULLO, J.:

The present proceedings were brought against these defendants, in the Court of First Instance of Ilocos Sur, for the crime of adultery. On arraignment, they pleaded guilty and on July 15, 1915, said court rendered judgment in which, considering defendants' plea of guilty and their lack of education as a circumstance mitigating their liability, he sentenced each of them, as guilty of said crime, to 2 years 4 months and 1 day of prision correccional and to pay onehalf of the costs.

On the same date Francisco Ramos, the complainant and husband of the defendant Dorica Manzano, presented a petition wherein he stated that, t)ut of consideration and compassion for his three minor children begotten by the defendant, his wife, he willingly pardoned her and he prayed the court to remit the penalty imposed upon her in the judgment aforementioned. This petition was denied by an order of the same date.

On July 8, defendants' counsel also petitioned the court to issue an order remitting said penalty, on the grounds that the aggrieved husband was willing that the penalty imposed in the judgment be set aside or remitted, and that the information filed in the cause was not subscribed or signed by said complainant. This petition was likewise denied by an order of the 12th of the same month of July, to which defendants excepted and at the same time appealed from the judgment. Their counsel has alleged in this instance that the trial court erred: (first) in not dismissing the complaint in this cause, filed and signed by the prosecuting attorney; and (second) in not remitting or setting aside the penalty imposed upon defendants.

The first assignment of error is based on the fact that the complaint herein was not filed or signed by the aggrieved husband, Francisco Ramos, but by the prosecuting attorney, in violation of the provision of section 1 of Act No. 1773 of the Philippine Commision, pursuant to which no prosecution for the crime of adultery committed against any person, other than a public official or employee, shall be instituted except upon the complaint of the aggrieved person or of the parents, grandparents, or guardian of such person.

But as may be seen, this section prescribes that, for the institution of proceedings for the crime of adultery committed against any person, other than a public official or employee, it is sufficient that the complaint be filed by the aggrieved person or by his parents, grandparents, or guardian.

In the case at bar the aggrieved husband, Francisco Ramos, on March 3, 1915, filed a complaint, subscribed and sworn to by him in the justice of the peace court of Candon, in which he accused his wife Dorica Manzano and the other defendant, Venancio Capistrano, of committing adultery, to which they both pleaded guilty in the same justice of the peace court. The record of the preliminary proceedings therein was therefore forwarded to the Court of First Instance and the accused were consequently placed under its jurisdiction. In the Court of First Instance the

proper complaint was filed by the provincial fiscal, whereby the present proceedings were instituted. So that it cannot be said that the prosecution for adultery was not instituted by the person aggrieved by said crime. The complaint filed by the latter in the justice of the peace court is that which gave rise to the criminal action prosecuted in this cause, and which conferred upon the Court of First Instance jurisdiction over the persons of the accused and the subject matter of the action. It is unquestionable that this cause was prosecuted and decided by virtue of said complaint and that said complaint gave rise to the filing of the proper complaint by the fiscal. The first error assigned by the defense is, therefore, without merit and cannot be sustained.

Since October 11, 1907, when said Act No. 1773 was passed, the crime of adultery has been deemed a public offense and, as stated in section 1 of the Act, is prosecuted in the same manner as are all other crimes defined by the Penal Code or by the Acts of the Philippine Commission. Section 2 of this Act prescribes that condonation, pardon, or remission of penalty by the aggrieved person shall in no way extinguish the liability of the guilty persons to criminal prosecution and punishment, nor shall such condonation, pardon, or remission operate to dismiss or suspend any prosecution, once commenced, in accordance with the provisions, of the preceding section, except that in cases of estupro, rapto or violation, the legal marriage of the accused or convicted person to the offended person shall extinguish such criminal liability.

In view of these categorical provisions, it is also unquestionable that the lower court did not err in refusing to remit or condone the penalty imposed upon the defendants in this cause, as he was requested to do by them and by the complaining witness and aggrieved husband.

As defendants, pleaded guilty to the crime of adultery, provided for and punished by article 433 of the Penal Code, and as no circumstance, modifying their criminal liability was found to have attended the commission of the crime, for their plea of guilty cannot be taken into account as an extenuation, nor, since it is a crime of adultery, can their lack of education, as it was erroneously held by the trial court, the corresponding penalty in the medium degree must be imposed upon them, though they should be granted the privilege prescribed in rule 93 of the provisional law for the application of the provisions of the Penal Code, as they are suffering temporary imprisonment, and it has not been shown that they fall within any of the exceptions of said rule.

Therefore, with the understanding that the penalty of prison correccional imposed upon each of the defendants shall be 3 years 6 months and 21 days and that the defendant Venancio Capistrano shall be sentenced in addition to the accessory penalties of suspension from all public office and from the right of suffrage during the period of his sentence, we affirm the judgment appealed from, with the costs of this instance against appellants in equal parts. In serving their respective sentences, defendants shall be allowed credit for one-half of the time they have been imprisoned while awaiting the final disposition of their appeal, any fraction of a day resulting from such rebate to be counted in their favor. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Moreland, and Trent, JJ., concur.

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