

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TEODORA TOPIÑO AND GABRIEL GUZMAN, DEFENDANTS. GABRIEL GUZMAN, APPELLANT.

G.R. No. 11895. December 20, 1916

Ponente: TRENT, J.

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TRENT, J.:

Teodora Topiño and Gabriel Guzman were charged with the crime of adultery. The former was acquitted and the latter found guilty and sentenced to three years, six months, and twenty-one days of prision coreccional, to the accessory penalties provided by law, and to the payment of one-half of the costs of the cause. Gabriel Guzman appealed.

It is urged that the trial court erred (1) in holding that it had jurisdiction to try this case; (2) in admitting Exhibit C presented by the prosecution; (3) in finding that Exhibit C was conclusive proof of the guilt of Gabriel Guzman; and (4) in not acquitting the appellant.

The trial court found that the complaint presented by the offended husband against Teodora Topino and Gabriel Guzman, charging them with the crime of adultery formed a part of the record of the case. In the preparation of the record to be sent to this court that complaint was omitted, but it has since been sent up by order of this court. So it is quite clear that the first alleged error is without foundation.

The prosecution offered in evidence Exhibits B and C, which read as follows:

"I, Teodora Topino, wife of Pedro Mateo, 23 years of age, a resident of the Hacienda de San Antonio, Isabela, after being duly sworn, freely and voluntarily declare that the following facts are true:

"That about six years ago in cabecera No. 22 of the Hacienda de San Antonio, I Ilagan, I left my husband Pedro Mateo's control in order to join my elder relatives who also then lived in the said cabecera; that about five years ago Gabriel Guzman invited me to live in his house on the same hacienda where, owing to a woman's weakness and the fact of his being a single man, we lived together conjugally, and so he possessed me, enjoying my favors. As the fruit of our amorous relations two children were born, Josefina and Homobono.

"In testimony whereof I hereunto affix a cross beside by name, in the presence of two witnesses, this 4th day of September, 1915. (Cross) Teodora Topino.—Cross affixed in the presence of: (Sgd.) A. Medel.—Teo. M. Cumagun.—Subscribed and sworn to before me this 4th day of September, 1915.—(Sgd.) Francisco Taccad, clerk of the Court of First Instance, Isabela.

"I, Gabriel Guzman, of age, single, and a resident of the Hacienda de San Antonio, Ilagan, after being duly sworn, freely and voluntarily declare as follows:

"That in or about the year 1912 I became acquainted with Teodora Topiño, by reason of her having offered to wash my clothes; that sometime afterwards, being ignorant of her situation, I succeeded in obtaining her favors

and as the result of our carnal relations, she began to show signs of pregnancy; that in view of those symptoms Mr. Orros, the manager of the hacienda on which I was living, warned me that that woman with whom I sustained these relations was married, but was only separated from her husband on account of certain differences and questions with him; that notwithstanding his warning and in view of the fact that my paternity of the foetus which she was already carrying in her belly was incontrovertible, and swayed by the sentiment natural to and innate in every father, I nevertheless continued my carnal relations with her, waiting for her husband who might consider himself aggrieved to appear; that up to the present time I have had two children by the said woman Teodora Topino. I also here record that if I consented to live with her in marital relations, it was owing to what she told me, to wit, that the then justice of the peace said that if she did not wish to join her husband she was not obliged to do so, and from that moment she was free. In my ignorance and believing that she was again single and free, I did not think it dangerous to sustain those relations with her.

"In witness of all the foregoing, I sign the present affidavit, in Ilagan, this 22d day of September, 1915—(Sgd.) G. Guzman.—Subscribed and sworn to before me, this 22d day of September, 1915.—The affiant exhibited to me his cedula F-233292, issued in Ilagan, Isabela, March 15, 1915.— (Sgd.) Ramon Crisologo, provincial fiscal, Isabela."

Francisco Taccad, clerk of the Court of First Instance of the Province of Isabela, testified that Exhibit 6 was sworn to and signed by Teodora Topino before him on the 4th day of September, 1915; that Teodora signed the document by a cross because she did not know how to write; and that before she signed Exhibit B in this manner it was read to her in her own dialect by the provincial fiscal.

Teodorico M. Gumagun testified that the appellant himself prepared the rough draft of Exhibit C; that he (the witness) then copied the rough draft on the typewriter; that after the document had been copied the appellant read and signed it; that he saw the appellant sign the document; that in the preparation and signing of it there were no threats, intimidation or force used whatever; and that the appellant voluntarily and of his own volition prepared and later signed Exhibit C after it had been copied from the rough draft on the typewriter.

Pedro Mateo, the offended husband, testified that he and Teodora Topino were legally married about ten years ago; (Exhibit A, the certificate of marriage, was presented in evidence without objection) that he filed the complaint against his wife because she had committed adultery with Gabriel Guzman; that he and his wife separated about seven years ago; that in less than one year thereafter she commenced living in adultery with Guzman; that he (the witness) had no children by Teodora; and that the two accused had been living together less than six years on the Hacienda of San Antonio.

Remigio Barcena testified that he knew Teodora Topino because they worked on the same hacienda; that he knew that she was married to Pedro Mateo, with whom she lived for about three years; that after she left her husband she went first to live with her father and then with Gabriel Guzman; that she had been living with Guzman for about six or seven years on the Hacienda of San Antonio; that he knew that Teodora and Guzman were living together because the house in which they live is on the side of the road which leads to the barrio of San Antonio; that every time he goes to town he sees them; and that Teodora and Guzman are living as man and wife because they have two or three children.

Vicente Constantino testified that he knew Teodora Topino; that she was married to Pedro Mateo; that they lived together about three years; that after they separated Teodora went to look for another place to live; that Teodora had been living with Gabriel Guzman in the latter's house for more than six years; that they had been living during this time as man and wife because Teodora has children; that he knows this to be a fact because every time he goes to the Hacienda of San Antonio or returns from that place he sees the two accused; and that it is true that he has never seen the two accused have illicit relations, neither has he seen Teodora give birth to a child, but he knows that Teodora has three children because the neighbors say so.

The foregoing is all of the testimony presented by the prosecution. The defense offered no witnesses, counsel saying, "The defense presents no proof and asks the dismissal of the case because there has been presented no complaint of the offended party."

The trial court, in finding the defendant Guzman guilty of the crime charged, said:

"By this confession, freely and voluntarily made by this defendant (a person of sufficient education), not challenged during the trial, the rough draft of which was prepared by himself, being corroborated by other evidence (such as that of his having lived with his codefendant, Teodora Topino, for six years and that of her being a married woman as shown by the certificate Exhibit A of the prosecution the authenticity of which was admitted by the defense and accepted in evidence without objection) the court is convinced beyond all reasonable doubt that the said defendant did lie with a married woman, knowing her to be such."

Teodora Topino was, as we have indicated, acquitted. The findings of fact with reference to this accused are as follows:

"The other defendant, Teodora Topino, also swore before the clerk of the court to the contents of an affidavit (the prosecution's Exhibit B), the translation of which into Spanish is as follows (Exhibit B, supra):

"But the prosecuting attorney has not proved this confession to be free and voluntary, wherefore it cannot be considered in this case. (U. S. vs. De Leon and De Leon 27 Phil. Rep., 506.) This confession being stricken out, there only remains against this defendant the circumstantial evidence of her having lived with Gabriel Guzman for six years, which is insufficient to sustain a conviction for adultery. The witnesses for the prosecution testified, indeed, that she lived conjugally with the said Guzman, and that, as a consequence thereof, she had two children; but on these witnesses being asked how they knew, they said that it was by deduction or by hearsay."

When Exhibits B and C were formally offered in evidence by the fiscal, counsel for the defendant objected, saying:

"I object to the admission of the document Exhibit B, because it has not been proven that the defendant made the said declaration voluntarily, because it is drawn up in the Ilocano dialect, and, furthermore, because it has not been ratified by the person who made or signed it.

"With regard to Exhibit C, the same objection is offered, to wit, that it has not been ratified by the affiant. * * *

"By the court: Exhibits B and C are admitted, on condition that they be accompanied by a translation of Exhibit B."

The second and third assignments of error relate to the admissibility and probative force of Exhibit C. The sole objection made in this court to the competency of Exhibit G is that it was subscribed and sworn to before the provincial fiscal, an officer not authorized to administer oaths under section 349 of the Code of Civil Procedure. This section reads:

"An affidavit to be used before any court, judge, or officer of the Philippine Islands may be taken before any judge or clerk of any court, or any justice of the peace, or any notary public in the Islands."

Section 2012 of the Code of Civil Procedure of California, enacted March 11, 1872, in the exact language of the Practice Act, section 424, is as follows:

"An affidavit to be used before any court, judge, or officer of this State may be taken before any judge or clerk of any court, or any justice of the peace, or notary public in this state."

This section of the California Code was subsequently amended to read:

"An affidavit to be used before any court, judge, or officer of this State may be taken before any officer authorized to administer oaths."

The section, as thus amended, was declared unconstitutional. (*Lewis vs. Dunne*, 134 Cal., 291.)

The Supreme Court of California in *Haile vs. Smith* (128 Cal., 415), in construing section 2012 of 1872, held that the section did not exclude all officers, except those herein mentioned, from taking affidavits to be used before courts and that affidavits taken before any officer of the state authorized to administer oaths may be thus used. Consequently, section 349, *supra*, of our Code is not exclusive. Affidavits taken before officers other than those mentioned in the section, if such officers are authorized to administer oaths, may be used in the courts in this country.

Section 2 of Act No. 302 provides that "For the purposes named in this section each provincial fiscal is hereby authorized to administer oaths." The section refers to preliminary investigations. Section 2 of Act No. 302 was repealed by Act No. 2657, known as the Administrative Code, and the reenactment (section 1306) wholly omitted that part of section 2 above quoted. But the affidavit had been sworn to long before the passage of the Administrative Code. Therefore, the repeal of the provisions authorizing provincial fiscals to administer oaths did not destroy or render inadmissible Exhibit C upon this ground. But if the repeal of the statute did render the affidavit as such inadmissible, it would still be competent evidence as a voluntary confession. The result is that there cannot be the slightest doubt about the correctness of the trial court's findings of fact to the effect that the appellant had carnal intercourse with Teodora Topino after he knew that she was a married woman. The appellant himself made the rough draft of the affidavit wherein this fact is fully set forth and the record shows, as we have indicated, that the same was made voluntarily, without the use of coercion, threats, promises or intimidation. Furthermore, the contents of Exhibit C are corroborated by the testimony of the above named witnesses.

Counsel in his argument in support of the fourth alleged error insists that the acquittal of Teodora Topino must necessarily result in the acquittal of her codefendant, the appellant. We think that the premises upon which this proposition rest are not well founded in law.

Articles 433, 434, and 435 of the Penal Code read:

"ART. 433. The penalty for adultery shall be prison correccional in its medium and maximum degrees.

"Adultery is committed by any married woman who shall lie with a man who is not her husband and by a man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.

"Art. 434. No penalty shall be imposed for the crime of adultery, except upon a complaint filed by the injured husband.

"The husband cannot institute a prosecution without including therein both the guilty parties, if they are both alive, nor in any case, if he shall have consented to the adultery or pardoned either of the adulterers.

"ART. 435. The husband may at any time remit the penalty imposed upon his wife.

"In such case the penalty imposed upon the wife's paramour shall also be deemed to be remitted."

Adultery is now, and has been since the passage of Act No. 1773 on October 11, 1907, a public crime and must be prosecuted in the same manner as are all other crimes defined by the Penal Code or by the Acts of the Philippine Commission, but no prosecution for the crime of adultery can be instituted except upon the complaint of the aggrieved party, and condonation, pardon, or remission of the penalty for adultery by the aggrieved person can in no way extinguish the liability of the guilty persons or operate to dismiss or suspend any prosecution once

commenced in accordance with the provisions of Act No. 1773. To this extent the above provisions of the Penal Code have been repealed.

If a man lies with a married woman, knowing her to be married, he commits the crime of adultery. If a married woman lies with a man who is not her husband, she likewise commits the crime of adultery. In order to constitute adultery in either instance, there must be a joint physical act Both bodies—that of the man and the woman—must concur in the act. Must there also be in every case a joint criminal intent? We think not. While the criminal intent may exist in the mind of one of the parties to the physical act, there may be no such intent in the mind of the other party. One may be guilty of the criminal intent, the other innocent, and yet the joint physical act necessary to constitute adultery may be complete. Thus, if one of the parties was, at the time of committing the physical act, insane, certainly such party has committed no crime; but it certainly cannot be contended that the other party who was sane, committed no crime. So, if the man had no knowledge that the woman was married, he would be innocent, in so far as the crime of adultery is concerned, and the woman guilty. The one would have to be acquitted and the other found guilty, although they were tried together. Or in other words, the act of sexual intercourse with a married or an unmarried man, other than her husband, is adultery in the woman without regard to the guilt of the man.

It is quite true that the husband cannot institute a prosecution for the crime of adultery without including therein both of the guilty parties, if they are both living (article 434, *supra*), but the statute does not require that both must necessarily be tried together. The force of the article is spent when the husband institutes the prosecution against both or includes both in his complaint. It is not for the husband to determine the question of the guilt or innocence of the paramour of the crime of adultery. That question must be left to the court. (*U. S. vs. Asuncion*, 22 Phil. Rep., 358.) When the complaint is tiled by the offended husband against both of the guilty parties, the proceedings then pass into the hands of the prosecuting officer, who may move for a dismissal of the complaint as to the paramour, if he is satisfied that he cannot establish guilty knowledge on the part of the man of the fact that the woman was married, and such dismissal would not of itself require the court to acquit the woman. Nor would the death of the woman during the pendency of the action defeat the trial and conviction of the man. (*U. S. vs. De la Torre and Gregorio* 25 Phil. Rep., 36.) Nor would the fact that the man had left the country and could not be apprehended defeat the trial and conviction of the woman. Again, if both were brought before the court to be tried jointly and one should claim a separate trial, which the court would have to grant (section 33, General Orders No. 58), the acquittal of the one would not necessarily bar a prosecution and conviction of the other. But it is said that in the instant case the woman was acquitted upon the ground that the proof as to her was not sufficient to establish beyond a reasonable doubt the fact that she had illicit intercourse with the man or that the joint physical act did, in fact, occur, and therefore the acquittal of the man must follow as a necessary consequence. If this be true, it would work a strange result if the male defendant, Gabriel Guzman, could openly admit, as he did, habitual illicit intercourse with Teodora Topino after he knew she was a married woman and then defy the law because there was no competent evidence against her. The mere fact that the trial judge was of the opinion that the evidence of record was insufficient to establish the guilt of Teodora beyond a reasonable doubt does not necessarily establish the fact, in so far as the other was concerned, that the two did not have illicit intercourse. The case at bar establishes this proposition beyond question.

In its decision of January 17, 1889, the supreme court of Spain had the following case under consideration: The offended husband presented a complaint against his wife, charging her with the crime of adultery as defined and penalized by article 449 of the Penal Code (article 433 of the Philippine Code), without including therein the paramour, because he was unknown. The trial court acquitted the defendant upon the ground that under the law relating to adultery one of the guilty parties alone could not be prosecuted and punished unless it be shown that the other was dead. On appeal this judgment was reversed, the court saying,

"In defining the said crime the Penal Code requires, in order that the man who lies with a married woman may incur the penal sanction provided therein, that he must know that she is married; this circumstance clearly shows that occasions may arise wherein a penalty may be imposed upon one of the guilty parties and not on the other."

It was suggested during the consideration of this case that, as the appellant did not know that Teodora was married for sometime after the commencement of their illicit relations, the continuance of such relations after he was informed of that fact might not constitute adultery. In determining this question it must be borne in mind that this is not a case where the woman is a common prostitute. There is no evidence in the record of unfaithfulness on the part of Teodora except with the appellant. She has had no illicit relations with any other man since she left her husband. Prior to the date on which Act No. 1773 became effective, adultery was considered a private crime in the sense that the prosecution could only be instituted upon the complaint of the injured husband and that the husband could pardon the guilty parties and remit the penalty imposed upon his wife, which had the effect of also remitting the penalty imposed on the paramour. The husband being the head of the family and the only person who could institute the prosecution and control its effects, it is quite clear that the principal object in penalizing the offense by the state was to protect the purity of the family and the honor of the husband, but now the conduct of the prosecution, after it is once commenced by the husband, and the enforcement of the penalties imposed is also a matter of public policy in which the Government is vitally interested to the extent of preserving the public peace and providing for the general welfare of the community. That the defendant's conduct in continuing to live in adultery with Teodora, after he found out that she was married, endangered the public peace and the general welfare of the community there can be no doubt. Article 433, *supra*, makes no such exceptions as the one here presented, and we can make none. For the foregoing reasons the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Torres, Johnson, Carson, and Araullo, JJ., concur.

Moreland, J., see dissenting opinion.

DISSENTING OPINION

MORELAND, J.:

The court holds that, of two persons charged with adultery and tried at the same time, the same court, in the same trial, and upon the same evidence, may, without error, find that the woman did not have carnal relations with the man but that the man did have carnal relations with the woman; and that, upon those findings, the court may legally convict the man although he acquits the woman. This is equivalent to holding that a conviction is legal without a *corpus delicti*.

The defendants in this case were jointly charged with adultery and tried together. The trial court found upon the evidence—this may be difficult to believe but it is the fact—that the prosecution had failed to prove that the woman had carnally known the man, but, on the other hand, that the evidence showed beyond a reasonable doubt that the man had carnally known the woman; and, upon the findings, acquitted the woman and convicted the man. The man appealed.

I regard it impossible, under the law of the Philippine Islands, or the common sense of mankind, to convict a man of adultery when the woman with whom he is alleged to have had the carnal relations charged is acquitted on the ground that she did not sustain such relations with him. Adultery is a crime which, by its very nature, is committed by a single act, notwithstanding two persons cooperate. Although in committing the crime of adultery, two persons must act together, nevertheless, neither can commit the crime alone. It belongs to that class of crimes

in which the wrongdoers act not upon the person or property of a third person but upon each other. The two together are a single operating cause. So far as the crime is concerned they are one in fact and in law. Separate them and the commission of the crime is impossible. Disunite them and the agency which committed the crime ceases to exist—the operating cause disappears. As to them the crime is indivisible; and the agency committing it is also indivisible. For this reason the death of the woman prior to a conviction of the man discharges him on principle from all responsibility. The French courts have so held. The reason given is "that the action against the woman for adultery and against her paramour is indivisible" and that the action against the paramour must follow the same fortunes as that against the woman, and that, therefore, when the action against the woman abates by reason of her death, the action against the paramour abates also." If this is correct doctrine how much more strongly must the principle be applicable if the woman is acquitted? The principle involved in this argument is none the less existent by reason of the fact that, in the Philippine Islands, there is a provision of statute to the effect that the death of one of the parties shall not prevent the prosecution of the other. That such a provision was considered necessary argues powerfully in favor of the position I am taking. It indicates that but for the express provision the result I contend for would follow.

This same theory is at the bottom of all of the provisions of the Penal Code dealing with this crime. Article 434 provides that no prosecution can be taken except upon the complaint of the husband; and that, if he does institute it, it must be against both guilty parties. It provides that "the husband cannot institute a prosecution without including therein both the guilty parties." (U. S. vs. Asuncion, 22 Phil. Rep., 358.) This strongly emphasizes the indivisible character of the responsibility as well as the singleness of the agency committing the crime, although the agency is two persons.

This characteristic of the crime of adultery under the Spanish law is still further emphasized by article 435. It provides that the husband may pardon his unfaithful wife and remit the penalty which may have been or might be imposed for her unfaithfulness; but it also declares that, if he does, the penalty imposed on her companion in crime shall be remitted also. This again draws attention to the indivisibility of responsibility. Whatever happens to the woman must happen to the man. Article 436 adds its weight to this interpretation. It says that—"a final judgment in favor of a defendant in an action for divorce upon the ground of adultery shall be conclusive in a criminal prosecution for the same offense."

It should be noted that, in an action by a husband against his wife for a divorce on the ground of adultery, the wife is the sole defendant. The adulterer is not a party. Nevertheless, such is the nature of the crime of adultery that the success of the woman in the civil action is a complete bar to a criminal action against her for adultery. But if it is a bar as to her, it certainly is as to the correspondent. If such is the case in an action in which the correspondent is not a party, and with respect to a civil action, how much more certainly would an acquittal of the woman in a criminal action in which he was a party be a bar to his conviction?

The general provision of the Penal Code defining the crime of adultery itself furnishes grounds to support the proposition that the responsibility as well as the action is indivisible, and that the producing cause is single. Article 433 reads:

"Adultery is committed by any married woman who shall lie with a man who is not her husband and by a man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void."

Under this article two elements are essential to the conviction of either party, assuming for the moment that they can be convicted separately: (1) the woman must be married and (2) the carnal relation with a man not her husband must exist. If either of these is not present a conviction of either party is impossible. But note that another element is necessary to convict the man. It must be shown that he knew the woman was married. Mere carnal

relations with a married woman is not adultery as to the man whether he is married or single. A man married or single cannot commit adultery. A married man may sustain relations with an unmarried woman and be guilty of no crime so long as he does not commit concubinage. Groizard says in the 5th volume of his commentaries on the Penal Code at page 17:

"To our legislators adultery is not a violation of the laws relating to marriage. It is a violation of those laws only when it is committed by a woman. The husband can break those laws without committing the crime of adultery."

The husband may lie with a woman not his wife without committing adultery. Not so the wife. When she lies with a man not her husband she is guilty of adultery. She, in other words, is, in reality, the only person capable of committing the crime of adultery under the law of the Philippine Islands. Remove the wife from the action by whatever means, and the crime of adultery disappears. If it disappears no one can be convicted of it. The reason for this has been given by the French courts as we have already seen. The action is indivisible; the responsibility is indivisible. Being founded solely upon the act of the woman, when she disappears there remains no foundation to the action.

Therefore, whether the man and the woman are together considered a single agency, a single operating cause, one and indivisible, or whether it be considered that the woman is the only one in reality capable of committing adultery, the result is the same. When the woman disappears from the action the case is ended.

The fact that the male defendant in a prosecution for adultery may be acquitted under article 433 and the woman still be convicted does not interfere in any way with the conclusions already reached. The reason for this is that there is one element necessary to be present to convict the man which is not necessary to convict the woman. He must know the woman was married. This proposition is quite different from that presented when one attempts to argue that the same court in the same trial and on the same evidence may find that the man had carnal relations with the woman but that the woman did not have such relations with the man. Where the man is acquitted and the woman convicted, the acquittal results not because there was no sexual relation proved, not because there was no adultery, no corpus delicti, but because, admitting the existence of the sexual act, the man was ignorant that the woman was married. The defense of ignorance is an admission of the illicit relation. If the man could defend on the other ground the defense of ignorance would be unnecessary—indeed would be in contradiction to his other defense.

There are several arguments in the opinion of the court offered to show that, in a prosecution for adultery, the woman may be acquitted on the ground of innocence of the act charged and, nevertheless, the man convicted, as occurred in the case at bar. The court, making one of these arguments, says:

"In order to constitute adultery in either instance, there must be a joint physical act. Both bodies—that of the man and the woman—must concur in the act. Must there also be in every case a joint criminal intent? We think not. While the criminal intent may exist in the mind of one of the parties to the physical act, there may be no such intent in the mind of the other party. One may be guilty of the criminal intent, the other innocent, and yet the joint physical act necessary to constitute adultery may be complete. Thus, if one of the parties was, at the time of committing the physical act, insane, certainly such party has committed no crime; but it certainly cannot be contended that the other party who was sane, committed no crime."

I confess I do not understand the argument. I suppose the court puts the question "Must there also be in every case a joint criminal intent?" not only for the purpose of answering it "We think not," but also for the purpose of presenting an argument, which it does in effect, by which it would attempt to show that its answer to its own question is correct. I shall consider the points brought out in the quotation. In the first place, what has a "joint criminal intent" to do with the matter before us? The question in hand is whether, in the same trial, before the

same judge, and upon the same evidence, the male defendant in a prosecution for adultery may be convicted in spite of the fact that the female defendant is acquitted on the ground that she had sustained no illicit relations with him. What has intent to do with such a question; and, above all, what has a "joint criminal intent" to do with it? The obvious purpose of the court is to demonstrate that, in spite of its statement that "there must be a joint physical act" and that "both bodies * * * must concur in the act," which would naturally, if not necessarily, point to the indivisibility not only of the action but of the responsibility and thus militate strongly against the general argument of the opinion, the effect of jointness of the act could be overcome by showing that the parties to the illicit act have separate intents. In other words, the purpose is to destroy the inference naturally to be drawn from the nature of the sexual act by playing upon the intent of the parties as a separating force. The idea was that, if it could be shown that a "joint criminal intent" was not necessary but, on the contrary, that each party defendant had his own separate and individual intent, that would serve to divide the sexual act which otherwise would be indivisible, and that division would justify separate trials and, therefore, a conviction of the man although preceded by an acquittal of the woman on the merits. In attempting to accomplish this purpose the court has fallen into statements and arguments that to me mean little. I am not sure that I know what a "joint criminal intent" is. I am aware that the same intention may be common to two or more persons; but I have been unable to conceive of a joint intent of two or more persons. There may be joint action and joint interests; but when it comes to intentions and purposes they are, as I understand it, common not joint. Being common they are alike: but, while they are alike, they are, nevertheless, personal to each party. But, it should be noted, this is not exclusive to adultery. It is so in every crime, whether it be adultery, or a crime against person or property. The fact that intention is individual and not "joint" is common to all crimes does not mean that all crimes are alike; and, particularly, it does not make adultery like every other crime to the extent of requiring or permitting the same treatment or procedure either in the indictment or on the trial. A single characteristic in common does not make all animals the same. When we wish to classify an animal we note not only its similarity to other animals but its dissimilarity also; and the ultimate classification is determined not by the similarity to other animals but by the dissimilarity. So the legal nature of the crime of adultery is determined by those characteristics which distinguish and separate it from all other crimes and which give it its name. We do not get far by noting only those elements of the crime of adultery which are common to all crimes. Simply because adultery has one element in common with other crimes it cannot be argued that it is to be treated as other crimes. It does not mean that the parties may be considered as two separate individuals each of which commits the crime independently of the other; that their joint act may be divided, and one half of it tried when the woman is tried and the other half tried with the man; that the woman may be acquitted of one half and the man convicted of the other; or that the patent absurdity may be committed of putting a man in jail because he carnally knew a woman while the woman goes free on the sole ground that she did not carnally know the man.

But we may assume as true all that the court contends for in its argument and still its conclusion remains without foundation. Let us assume that adultery is in every respect like every other crime, homicide, for example. Let us assume that A and B are being jointly tried for the death of C. B is acquitted by the court on the ground that, under the evidence, there had been no homicide, no death, no corpus delicti; and that, at the time of the trial, the person alleged to have been killed by A and B was alive and well and at that very moment present in court. Would the conviction of A of homicide by the same court at the same time and upon the same evidence stand either in law or common sense? The Supreme Court says "Yes," because, as it argues in this case, there was no "joint criminal intent" between A and B, that they could have been tried separately and one convicted while the other was acquitted, and that, while one may have had a criminal intent, the other may not, etc. In the case before us where they were tried jointly for adultery the woman was acquitted by the court on the ground that, under the evidence, she had not had carnal relations with her codefendant; that there had been no adultery no corpus delicti, and that she, at the very moment of her trial, stood before the court a pure woman, without stain or blemish on her

character or honor. Would the conviction of the man by the same court at the same time and on the same evidence stand either in law or common sense? The Supreme Court says "Yes" and for the reasons stated in connection with the supposed homicide.

Thus, even though we accept the theory of the court that adultery is in every respect like other crimes, the conclusion reached upon that hypothesis is erroneous as applied to the case at bar. The real difficulty with the contention, and that difficulty is present in a trial for any crime, is that, as to one of the joint defendants, the court finds that no crime was committed, that there was no corpus delicti; but as to the other defendant, on the same evidence, the same court finds that a crime had been committed, that there was a corpus delicti. No such absurdity can be permitted. The proposition that the same court in the same trial, on the same evidence, may be permitted to find that a man on a given occasion had illicit relations with a woman, but that the woman did not on the occasion named have such relations with the man, does not, it seems to me, merit serious consideration. Such a result as this is reached by the argument of the court based on the assumption that there was no "joint criminal intent."

In the second place, what does the court mean when it says "while the criminal intent may exist in the mind of one of the parties * * * there may be no such intent in the mind of the other party;" and what effect can that fact, if it is a fact, have on the question before us? No criminal intent is required in the crime of adultery except that which necessarily springs from the voluntary commission of the sexual act. No specific or special intent is necessary. To the law the intent of a person who voluntarily shoots another in the back with a gun and kills him is immaterial if it is alleged to be different from that which is naturally inferred from the nature and result of the act. Indeed, he will not be heard to say that he had no intent to do the very thing he did or to accomplish the very result effected.[1] A married woman voluntarily having illicit relations with a man not her husband will not be permitted to offer a lack of criminal intent as a defense. She will be conclusively deemed to have the intent which her acts naturally and necessarily manifest. The statement of the court, therefore, that in adultery "one may be guilty of a criminal intent, the other innocent" is misleading. The woman who lies with a man not her husband cannot in law lack a criminal intent or be innocent. She acts voluntarily and her act conclusively established her criminal intention. On the other hand, the man who voluntarily sustains illicit intercourse with a married woman not his wife is legally in the same position, so far as intent is concerned. The shield of ignorance, which the law places before him, does not affect the intent. It is an element of the crime as essential to his conviction as the sexual act itself. It is one of the facts necessary to be proved by the prosecution before a conviction can be had. The law declares that the man shall be acquitted if the sexual act is not proved; but that does not mean that failure to prove that act shows a lack of intent on the part of either defendant. It is simply a failure to prove an act, not a state of mind. So the law declares that he shall be acquitted if knowledge is not proved; but that does not mean that the failure to prove knowledge establishes a lack of criminal intent on his part; for no man who holds sexual relations with a woman not his wife can be said to be innocent whether he knows she is married or not. It is simply a failure to prove a material fact, not a failure to prove an evil mind.

We, therefore, see that the discussion of the court of the intention of the parties has doubtful significance. The intent carries no weight or influence when opposed to that manifested by the act itself; and if there was ever an act which shows what the parties intended it is the act on which the crime of adultery is founded. The statement that, "while the criminal intent may exist in the mind of one of the parties to the physical act, there may be no such intent in the mind of the other party" is, therefore, misleading and brings nothing of value to the discussion.

In the third place, to clinch the argument that there may be separate or different intentions on the part of the two defendants, and that, therefore, one may be convicted while the other is acquitted, the court says:

"Thus, if one of the parties was, at the time of committing the physical act, insane, certainly such party has committed no crime; but it certainly can not be contended that the other party who was sane, committed no

crime."

Let us admit all the court here contends for and still we advance not a pace in the resolution of the question before us. A lunatic can have no intention one way or the other, because he has no will, no mind. Having no mind, no governing or controlling power, he can have no purpose, good or bad. Insanity does not raise a question of intent but of agency—a question concerning the force committing the act. If there is insanity the agency is not responsible; it is not a person in the eye of the law. It is an ungovernable force born of no mind, the product of no reason, the result of no intention. Besides, the defense of insanity admits the performance of the act charged—concedes the guilt of the defendant, but seeks to avoid the effect of the admission by pleading irresponsibility, by declaring that the law should not punish a person without a mind. Insanity affects the responsibility, the punishment. The question whether one may be punished or not has no relation to the question whether certain alleged illicit relations existed. The fact that a murdered person was insane in no way lessens the responsibility of the murderer; and the fact that the murderer was insane is no evidence that the murdered man is not dead. Insanity affects neither the act nor the result of the act. Nor does it in any way, whether it be held to affect one party or the other, prove or tend to prove that the murdering and the being murdered were separate acts each capable of being looked at separate and apart from the other and of being cognized separately. It is no more possible to separate the act of the parties to a sexual relation than it is to separate the act of killing from the act or state of being killed. Both are, by the very nature of things, inseparably joined together. To argue, because a woman charged with and convicted of adultery may escape punishment by pleading insanity, that therefore, the sexual act is divisible to the extent that the absence thereof may be found as to the woman but the presence thereof found as to the man, is, it seems to me straining logic, common sense and the law beyond all precedent.

I have already referred to the argument contained in the later part of the quotation from the court's opinion, that relating to the acquittal of the man and the conviction of the woman, and shown that that fact furnishes no ground for the contention that the sexual act is divisible, that is, that it may be divided into two parts, that, therefore, the parties may be tried separately, and that, while the woman may be acquitted of one-half on the ground that the carnal act had not been performed, the alleged correspondent may, at the same time and on the same evidence, be convicted of the other half on the ground that the carnal act had been performed.

There is in the opinion a further statement sustaining the proposition that the woman may be acquitted on the ground that there was no illicit relations and the man convicted on the ground that there was. It is as follows:

"When the complaint is filed by the offended husband against both of the guilty parties, the proceedings pass into the hands of the prosecuting officer, who may move for a dismissal of the complaint as to the paramour, if he is satisfied that he cannot establish guilty knowledge on the part of the man of the fact that the woman was married, and such dismissal would not of itself require the court to acquit the woman. Nor would the death of the woman during the pendency of the action defeat the trial and conviction of the man. (U. S. vs. De la Torre and Gregorio, 25 Phil. Rep., 36.) Nor would the fact that the man had left the country and could not be apprehended defeat the trial and conviction of the woman."

The court puts several example which, it thinks, illustrates favorably the proposition stated. It is to be noted, however, that it does not submit the very case in hand to the test of similar examples. The court contends that, if the prosecuting officer "is satisfied that he cannot establish guilty knowledge on the part of the man," he may move for a dismissal of the complaint as to him. Let us assume this to be true, and still we may fairly ask the question: What effect has that fact on the question at issue? Whether or not the man had knowledge that the woman was married does not prove anything one way or the other with respect to the existence of the illicit relations. I make no question that any defense which either defendant may make which is not connected with the existence of the illicit relations may be offered and the party in whose behalf it is tendered may properly be

acquitted, if it is sustained. The contention which I make is, and this refers to the question presented by this case, that it is not legally possible that the woman may be acquitted on the ground that the evidence did not prove the illicit act and the man convicted on the ground that the evidence did prove the illicit act. Now, whether or not the man knew that the woman was married has nothing to do with that contention.

The court also says that the death of the woman during the pendency of the action would not cause the abatement of the action against the man. That is true not on principle but by reason of a specific provision of the Penal Code designed to change the principle.

It is also stated that if the man had left the country and could not be apprehended the trial against the woman might still continue. That is true for the same reason. But why not put the case at bar to the test used by the court in assumed cases and see what would be the result. What would the trial court say of a prosecuting official who would make a motion in an adultery action to dismiss the complaint against the woman on the ground that he could not prove the illicit relations charged, and, at the same time, move the trial of the man upon the ground that he could prove the illicit relations? Yet the Supreme Court would have us hold that, because the prosecuting attorney may move for the dismissal of the complaint as to the man on the ground that he had no knowledge that the woman was married and still go on with the trial of the woman, he may also move for the dismissal of the complaint against the woman on the ground that he could not prove the illicit relations and, at the same time, move the trial of the action against the man on the ground that he could prove those relations.

The court continues its argument saying:

"Again, if both were brought before the court to be tried jointly and one should claim a separate trial, which the court would have to grant (section 33, General Orders No. 58), the acquittal of the one would not necessarily bar a prosecution and conviction of the other."

This statement assumes much. It assumes that a separate trial would have to be granted. I deny that that is true. Section 33 of General Orders No. 58 does not apply to an adultery action. It applies only to those actions where a number of persons combine in the commission of a crime against the person or property of another. It provides that "when two or more defendants are jointly charged with a felony, any one of the defendants demanding it must be tried separately." Defendants in an adultery action are not "jointly charged." They are charged as one person, one agency, one operating force as complete and perfect as if only one person had committed the criminal act. As already stated, every provision of the Penal Code touching the subject shows clearly that that is so. I have already shown the nature of the act charged, that the complaint must be laid against both of them; that it cannot be filed against them separately. It necessarily follows that if they must be charged together they must be tried together. It would, of course, strongly tend to defeat the purpose of the provision requiring a charge against both if, after the charge was made, they should be tried separately. Indeed, it would defeat the main purpose of the Penal Code in so far as it deals with adultery. That purpose is to punish both or neither; to prevent the husband from selecting his victim either for punishment or blackmail; to prevent his exploiting the adulterer and still cohabit with the adulteress; to prevent one defendant from being tried by one judge and another defendant by another; and to prevent the absurdity which has occurred in the very case at bar of a conviction of the man after the acquittal of the woman. All or any of these results, which the lawmakers tried their best to prevent, might occur if separate trials were permitted. Indeed, the separation of the two defendants by means of separate trials would tend to work every mischief which the lawmakers foresaw when they required that the complaint should be made against both. They knew the indivisible character of the offense; they knew the singleness of the operating or producing cause; they knew that the agency was a single agency and that it was as impossible logically to divide it as it was to divide a single force or a single individual—as impossible to separate the man from the woman as to separate the murderer from the man he murdered; they knew that, if there were separate trials, a conviction might occur in case

of the man and an acquittal in case of the woman; and no legislator desired to assume the responsibility of having created a condition where such an absurdity could be perpetrated. They knew that separate trials would deny the indivisible character of the action, the oneness of the agency committing the crime, the inseparableness of the criminal responsibility. They knew that, in law, the woman is the only person who commits adultery; and they knew that, in cases where they were jointly tried, that which would require the acquittal of the woman would require also the acquittal of the man.

Furthermore, if they may be tried separately then it necessarily follows that they may be charged separately. It is impossible to escape that conclusion. Every case to which section 33 of General Orders No. 58 refers is one in which the persons could be separately charged; that is, a separate complaint could be lodged against each one. That is to say, that section refers exclusively to those cases in which the parties could have been separately charged. It should need no argument to demonstrate that, if parties may be separately tried, they may be separately charged. A mere statement of the proposition is enough to show its correctness. Likewise it should take no argument to demonstrate that, if the law requires two persons to be charged together, the persons thus charged must be tried together. Otherwise, the requirement that they be jointly charged is valueless and without force or effect. To admit that two persons must be charged together and then deny that they must be tried together presents a contradiction so open as to need no argument to demonstrate the unsoundness of the contention which it is adduced to support and without which it would fall.

The court further states:

"But it is said that in the instant case the woman was acquitted upon the ground that the proof as to her was not sufficient to establish beyond a reasonable doubt the fact that she had illicit intercourse with the man or that the joint physical act did, in fact, occur, and therefore the acquittal of the man must follow as a necessary consequence. If this is true, it would work a strange result if the male defendant, Gabriel Guzman, could openly admit, as he did, habitual illicit intercourse with Teodora Topino after he knew she was a married woman and then defy the law because there was no competent evidence against her. The mere fact that the trial judge was of the opinion that the evidence of record was insufficient to establish the guilt of Teodora beyond a reasonable doubt does not necessarily establish the fact, in so far as the other was concerned, that the two did not have illicit intercourse. The case at bar establishes this proposition beyond question."

This argument, it will be observed, is founded on a false conception of the effect of an acquittal and gives no consideration or effect to the principle that a person is deemed to be innocent until guilt is proved beyond a reasonable doubt. The court bases its whole argument in the quotation upon the proposition that there is a difference between finding that the evidence is not sufficient to sustain the charge and a finding that the accused is innocent. The court says that, inasmuch as the trial court found only that "the proof as to her was not sufficient to establish beyond a reasonable doubt the fact that she had illicit intercourse with the man," which is not a finding that no illicit relations existed, that, therefore, the prosecution has still a right to show, so far as the man is concerned, that those relations did exist. This is a complete misconception of the result of acquittal in a criminal action. When the evidence is not sufficient to prove the guilt of the woman she stands before the world innocent; that is, in law, she never committed the act charged. If she never committed it then, of course, the man never committed it. The question whether the illicit act occurred is, under the circumstances set out, closed by a finding of a court of competent jurisdiction incorporated in a final judgment.

The misconception of the court with regard to the result of an acquittal of the woman appears with striking clearness in this portion of the quotation:

"The mere fact that the trial judge was of the opinion that the evidence of record was insufficient to establish the guilt of Teodora beyond a reasonable doubt does not necessarily establish the fact, in so far as the other

was concerned, that the two did not have illicit intercourse."

The finding of the judge that the evidence was insufficient to prove the woman's guilt was in law a declaration of the woman's innocence—was in law a declaration that no such relation ever existed; and gave her the right, which she had always enjoyed, to stand before the world a clean woman. If, after she has been acquitted, her purity and innocence may be again dragged into question simply and solely because the man is separately tried, the protection which the law gives her by this declaration is withdrawn and she is again subject in effect to be tried for the very offense of which she was once acquitted. It boots little to say that she cannot be imprisoned having been once acquitted. This refuge is of little protection to a woman of decency and of honor when, by virtue of the subsequent trial and conviction of her codefendant, she may again be subject to the accusation of her husband and friends that she was guilty of illicit relations in spite of the fact that she had once been acquitted of them. The court says that, to permit the acquittal of the man "would work a strange result." I ask if a far stranger and far more serious result would not be worked if, after a declaration of innocence by a court of competent jurisdiction the character of the woman might nevertheless be blackened by the evidence in another case where the man was on trial for the very acts, not the acts of some other person, but the very acts of which she had already been declared innocent. This class of argument disregards every element which distinguishes adultery from other crimes. It completely obliterates every distinguishing characteristic of the crime of adultery and puts it on the same footing as other crimes. It gives no consideration to the nature of the sexual act. It destroys the fundamental difference between that crime and crimes against persons and property. It disregards the legislative requirement that that crime shall be dealt with differently from other crimes. It prevents the results which the legislature intended to secure and it brings into existence every evil which the legislature intended to prevent. It wipes out the distinction made by the Spanish legislator between adultery and other crimes, which has been expressly recognized in statutes passed since the American occupation, notably Act No. 1773, which, while it makes adultery a public crime, does so only to the extent of requiring the prosecution to be conducted by a public official. In every other respect it is at present a private crime and that Act itself, in express terms, requires that the complaint shall not only be made against both of them but it shall be made by the husband of the guilty woman. (U. S. vs. Narvas, 14 Phil. Rep., 410; U. S. vs. Poquis, 14 Phil. Rep., 261.)

In the case of *United States vs. Bacas* (14 Phil. Rep., 308), the court says:

"Paragraph 2 of article 434 of the Penal Code provides that the injured husband can not enter a complaint for adultery except against both guilty parties, and in the present case the complaint has only been entered against the adulteress, but not against the other guilty party.

"Although Act No. 1773 of the Commission authorizes the prosecuting attorney to file charges for this crime, yet, the conditions established in chapter 1, title 9, book 2 of the Penal Code which deals with the crime of adultery have not been altered thereby, because the real and main object thereof teas no other than that the prosecuting attorney shall appear in such cases.

"Therefore, in the absence of a complaint in accordance with the provisions of the law, the case herein is dismissed, and the judgment appealed from is hereby reversed, with costs de officio."

The last argument in the opinion of the court to which I desire to refer is a continuation of that just dealt with. Speaking of the evidence with regard to the existence of the illicit relations introduced against the man in the case at bar, the court said that "the case at bar establishes this proposition beyond question;" that is to say, that, in the case at bar, the guilt of the man was established by the evidence beyond a reasonable doubt. Why, then, did it not also establish the guilt of the woman beyond a reasonable doubt? And why was the woman acquitted? Every bit of evidence which is proof against the man must necessarily be proof also against the woman; and if the illicit relations of the man with the woman were established beyond question, then the illicit relations of the woman

with the man must have been established beyond question also. This style of argument, as I have before indicated, completely loses sight of the indivisible nature of the action. It follows from the nature of the act that what is proof against one is proof against the other; and that when the court seeks to tear them apart and to introduce evidence against the one which will not be evidence against the other, it attempts to do an impossible thing. It is a plain contradiction of speech as well as of sense to assert that the evidence may show the guilt of the man without also showing the guilt of the woman.

I am rather surprised that the court did not offer an argument based on the claim that either of the defendants in an action of adultery could plead guilty, leaving the other to be tried alone with all the possibilities of acquittal, etc., which that implies. Under the Spanish law pleas in criminal cases were not known. There might be a confession but no plea. In spite of the fact that in a case of adultery the man confessed his guilt and refused to defend, the two, the man and the woman were nevertheless tried; and if the woman was acquitted the man was also acquitted in spite of his confession. That is precisely the law in the Philippine Islands to-day. As was held in the case of *United States vs. Bacas*, above, nothing substantive or fundamental in the law of adultery has been changed since the American occupation. Neither confessions nor pleas can alter the nature of the crime of adultery; nor can they frustrate the purpose of the Legislature.

[1] In the case of *United States v. Cariaga* (R. G. No. 9832, decided Nov. 24, 1914 [not published]), I said in a dissenting opinion:

"It is no reply to assert that, in this particular case, the deceased assented to the assault upon his person or that the accused believed that he was invulnerable and that, therefore, he did not intend to kill him. May one consent to be killed and thereby relieve the one who kills him from responsibility for his act? Of course not. Answering the other contention, we may dispose of it by asking: 'Is one to be allowed to deny the laws of nature or plead ignorance thereof?' May one who voluntarily shoots another through the heart be allowed to claim that he did not know the shot would kill him? May one who voluntarily strikes another a fatal blow with a deadly weapon successfully plead in his defense that he did not know the blow would kill? To all these questions the answer is emphatically, no. The fundamental rule of action in criminal law as everywhere else is that no man of sane mind will be permitted to escape or elude the natural and ordinary consequences of his voluntary acts. The law, as well as reason and common sense, refuses to permit one's intentions to contradict his voluntary acts. If one throws a brick into the air he cannot be heard to say that he did not intend that it should fall to the ground. If one voluntarily sets fire to inflammable materials he will not be permitted to say that he did not intend to burn them. If one shoots another through the heart, neither law nor common sense will allow him to say that he did not intend to injure.

"So in this case. The accused, having voluntarily struck the deceased a fatal blow with a deadly weapon, will not be heard to say, in order to escape the consequences of the act, that he did not intend to injure. And this entirely apart from his ignorance and superstition. While ignorance and superstition will extenuate and reduce the punishment, it never deprives the act of its criminality. Before men may be allowed to free themselves from the natural and ordinary consequences of their voluntary acts they must plead insanity; for no sane person can say that he does not know that a dagger thrust in a vital part of the body is injurious.

"From what has been said it is clear that the alleged intent of the accused in stabbing the deceased has nothing to do with the case so far as the criminality of his act is concerned. His intention is derived from his act and not from what he says about it. As I have said, one's intention can not be in direct and open contradiction of his act. If his act is voluntary and prohibited, then his intention is criminal. Everything would soon be topsy turvy if men were allowed to have intentions which not only have absolutely no relation to their acts but are in open and flagrant contradiction thereof.

* * * * *

"There has been much written by commentators, authors, jurists and courts about the necessity of a criminal intent before an act can constitute a crime under the Penal Code. I believe that much of it has been due to a misunderstanding of the provisions of that Code and the system of criminal law which it embodies. Under that system, with the exception of a few special crimes, no criminal intent, apart from the voluntariness of the act itself, is required. The Penal Code is based upon the proposition that every person is conclusively presumed to intend the ordinary consequences of his voluntary acts; and, if that act is prohibited, the act is the crime.

"Article 1 of the Penal Code reads:

"All voluntary acts and omissions punishable by law are felonies (delitos) or misdemeanors (faltas).

" 'Acts and omissions punishable by law are always presumed to be voluntary unless the contrary shall appear.

"Any person voluntarily committing a felony (delito) or misdemeanor (falta) shall incur criminal liability, although the wrongful act done be different from that which he intended.'

"This article clearly demonstrates that all that is necessary for the commission of a crime is a voluntary act which is an act punished by law. The theory of criminal jurisprudence promulgated by the Penal Code is not materially different from that in English speaking countries. There, as here, the law will not permit one who performs a prohibited act voluntarily, to declare that he had no intention to commit the act or that he did not know that the act which he performed would produce the consequences which it ordinarily and usually produces; and that is substantially all there is of the question. No criminal intent, except in special cases, is required under the Penal Code except that intention which the law indissolubly joins to the nature of the act producing the results which such an act usually, naturally and ordinarily produces. The only defense which a person has who has performed an act punishable by law is to show that the act was not voluntary, or that it was done in defense of himself or of some other person. If he is able to show that the act was not voluntary or was done in self-defense, he may escape responsibility; but unless he shows that, he is responsible.

"That the Penal Code requires no separate intention apart from the nature and quality of the act performed is clear from articles 8 and 9 thereof. Article 8 contains the only grounds upon which a person may be relieved from responsibility for his acts, and if he cannot bring his case within one of the 13 paragraphs of that section, he cannot be relieved from criminal responsibility. If he is (1) an imbecile or a lunatic; or (2) a person under 9 years of age; (3) a person over 9 years of age and under 15 who acted without discernment; or (4) one who acts in defense of his person or rights under proper circumstances; or (5) one who acts in defense of the person or rights of his spouse or certain other relatives specifically named; or (6) one who acts in defense of the person or rights of a stranger under certain circumstances; or (7) one who, in order to avoid an evil or injury, does an act which causes damage to the property of another under certain circumstances; or (8) one who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it; or (9) one who acts under the compulsion or an irresistible force; or (10) one who acts under the impulse of an uncontrollable fear of an equal or greater injury; or (11) one who acts in the fulfilment of a duty or in the lawful exercise of a right or office; or (12) one who acts by virtue of obedience due another; or (13) one who fails to perform an act required by law, when prevented by some lawful or insuperable cause; unless he can bring his case within one of these exceptions he must lie under his criminal responsibility and his intention in committing the act has nothing to do with it.

"That no intention is required is further shown by article 9, which deals with extenuating circumstances. In this article every form of excuse, apart from the voluntariness of the act, which an accused may urge to relieve himself from responsibility for his act, has been anticipated by the code and has been expressly made, not a cause for relieving the accused of criminal responsibility, but an extenuating circumstance; and we find in article 9 a list containing substantially every conceivable reason upon which an accused person could rely in attempting to

relieve himself from responsibility for his voluntary acts. His attempt, therefore, to relieve himself from criminal responsibility for any other cause except that the act was not voluntary has been forestalled by the provisions of the code which remove them from the category of causes relieving from responsibility and place them in the category of extenuating circumstances which go simply to a modification of the penalty."

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