

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOROTEA ORTEGA AND RAMON CHUA YAP, DEFENDANTS AND APPELLANTS.

G.R. No. 12260. October 20, 1917

Ponente: CARSON, J.

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CARSON, J.:

The defendants and appellants in this case were convicted on the 12th day of June, 1916, in the Court of First Instance of the Province of Rizal, of the crime of adultery, committed, as charged in the complaint, in the municipality of Antipolo in that province, between the 9th and 12th days of May, 1914. The complaint was filed by Antonio Ang Seng Queng, the husband of Dorotea Ortega, on the 26th day of October, 1915.

It appears that on November 14, 1914, a judgment was entered in a criminal action in the Court of First Instance of Manila, acquitting these accused of another charge of the crime of adultery set forth in a complaint filed in that court on the 12th day of October, 1914, alleging the commission of the crime of adultery in the city of Manila, between the 1st and 10th days of October, 1914.

It further appears that on or about October 15, 1914, a civil action for divorce was instituted against the wife by the husband in the Court of First Instance in the city of Manila, and that prior to the date of the institution of the criminal proceedings in the Province of Rizal, judgment on the merits had been rendered in the civil action against the plaintiff husband and in favor of the defendant wife, absolving her from the charges of adulterous relations set forth in the complaint.

At the time when the criminal action was instituted and decided in the Court of First Instance of Rizal, an appeal was pending in this court from the judgment rendered by the Court of First Instance of Manila in favor of the wife in the civil action for divorce; and when the appeal from the judgment in the criminal action in the Province of Rizal was first submitted to this court, our attention was invited and directed to the fact that the appeal in the civil action was still pending. Some time thereafter the appeal in the civil action was dismissed on the motion of the appellant; and the judgment in favor of the wife in the civil action for divorce in the Court of First Instance of Manila became final and unappealable, prior to the date of the resubmission of the appeal in the case at bar at the opening of the present term.

On the appeal in the case at bar, counsel for the defendants and appellants renewed their contentions in the court below that the judgments in the criminal and the civil actions, in the Court of First Instance of Manila, sustained their pleas of "autrefois acquit," and of res adjudicata under the provisions of article 436 of the Penal Code, which were submitted in due form upon their arraignment, and supported by the introduction into the record of copies of the proceedings had in the former cases, including the judgments entered therein.

The Attorney-General contends with much force that the plea of "autrefois acquit," based on the judgment in the former criminal actions, should not be sustained, because the Court of First Instance of the city of Manila had no jurisdiction in a criminal action over the adulterous acts with which the accused were charged, and of which they were convicted in the case at bar. This because the complaint in the case at bar and the evidence submitted at the

trial disclose that these alleged adulterous acts, if committed at all, were committed in the Province of Rizal and beyond the territorial jurisdiction of the Court of First Instance of Manila; and it is contended that an acquittal in the Court of First Instance of the city of Manila, on a charge of the commission of the crime of adultery within the jurisdictional limits of that court, should not be held to be a bar to a prosecution and conviction upon another charge of adultery committed beyond the jurisdictional limits of that court, when the second charge is submitted in the Court of First Instance of the province wherein it is alleged and proven that the crime was committed.

We do not deem it necessary, however, to discuss or decide this question, because we are of opinion that a judgment in favor of the wife in a civil action for divorce is a bar to her subsequent prosecution and conviction in a criminal action for adultery, based upon the commission of alleged adulterous acts prior to the institution of the civil action—and this without regard to the place where it is alleged that such adulterous acts were committed.

Article 436 of the Penal Code is as follows:

"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.

"If the decision in the civil case is to the effect that adultery has been committed, a prosecution shall, nevertheless, be necessary for the imposition of a penalty."

The first paragraph of the article is manifestly conclusive as to the rights of the defendants and appellants in the case at bar. 'It may be well to observe, however, that in a civil action for divorce on the ground of adultery the inquiry as to the guilt or innocence of the defendant spouse is not limited to the commission of adulterous acts within the territorial jurisdiction of the court wherein the action is pending: so that in such an action a judgment on the merits, declaring that there are no sufficient grounds for a divorce. is in substance and effect a judicial finding that there is no merit in the allegations set forth in the complaint of the plaintiff spouse praying for divorce on the ground of the alleged unfaithfulness of the defendant spouse. In other words, the judgment is a solemn declaration that the defendant spouse hasnot been guilty of adultery prior to the date of the institution of the civil action for divorce.

In this jurisdiction, criminal actions for adultery cannot be instituted except on the complaint of the offended spouse, and the provisions of article 436 of the Penal Code as to the conclusiveness in such an action of a judgment in favor of the defendant in a civil action for divorce is, therefore, no more than a formal declaration of the logical effect of such a judgment to deny to the complaining party the right to harrass and prosecute his spouse with the prosecution of criminal proceedings based upon charges which have been judicially determined to be without foundation in a solemn judgment rendered in a civil action in which he was a complaining party, and in the course of which he was afforded an opportunity to establish the truth of such charges if they were well founded. No such contentions can be advanced, therefore, against the conclusiveness of a judgment in a civil action for divorce in a subsequent criminal action charging that offense, as was submitted by the Attorney-General against the claim of the alleged conclusiveness of an acquittal in a criminal action for adultery with relation to a subsequent criminal action for that crime, charging the commission of adulterous acts beyond the territorial jurisdiction of the court wherein the first criminal action was tried.

We conclude that the judgment entered in the court below convicting and sentencing these defendants and appellants of the crime of adultery should be reversed, and that, it appearing that final judgment has been entered in favor of the defendant wife in in action for divorce upon the ground of adultery, that judgment is conclusive in this action, so that the defendants and appellants should be acquitted of the crime of adultery with which they were charged in the complaint filed in the court below and their bail bonds exonerated, with the costs of both instances de officio. So ordered.

Arellano, C. J., Torres, Johnson, Araullo, Street, and Malcolm, JJ., concur.

Judgment reversed; defendants acquitted.

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