

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARGARITA FELICIANO, DEFENDANT AND APPELLANT.*G.R. No. 12724. August 10, 1917*

Ponente: MALCOLM, J.

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Felix Atacador filed a complaint against his wife Margarita Feliciano and one Pedro Velasquez, charging them with the crime of adultery. After a few witnesses had been called in the separate trial of Velasquez, on motion of the prosecution the case was dismissed. On the trial of Margarita Feliciano, she was found guilty and sentenced to three years six months and twenty-one days of prision correccional, with the costs. From this sentence she has appealed, making four assignments of error.

One assignment of error is that the trial court should have dismissed the case against the accused in view of having dismissed the case against her coaccused Velasquez. The argument that the charge of adultery, necessarily under one complaint, is indivisible impresses one strongly. However, there is now no occasion to discuss this point for in the late case of *U. S. vs. Topiño and Guzman* ([1916] 35 Phil., 901,) citing the decision of the supreme court of Spain of January 17, 1889, it was expressly held that where a man and a woman are charged in the same complaint with the crime of adultery the acquittal of the woman does not necessarily carry with it the acquittal of the man, although the offense is one which can only be committed by two persons. Paraphrasing the language somewhat, it can now be held that under a complaint for adultery the acquittal of the man does not necessarily carry with it the acquittal of the woman because, among other reasons, the man may not have known that the woman was married.

Another assignment of error is that the husband was not competent to give testimony as to the pregnancy of the wife. As a general rule, the husband can testify against the wife in an adultery case because while adultery is in one sense a public crime, it can only be prosecuted with a few exceptions on the complaint of the aggrieved party. Adultery would therefore come within the provisos of section 383, paragraph 3, of the Code of Civil Procedure, as amended, as an action for a crime committed by the wife against the husband. Whether we can stretch the proviso to cover the testimony of the husband who expresses an opinion as to the pregnancy of the wife is doubtful, which, however, in this instance can be waived without decision.

The other assignments of error go to the merits of the case. The nature of the crime of adultery is such that it will not be often when it can be established by direct evidence. Nevertheless, strong circumstantial and corroborative evidence such as will lead the guarded discretion of a reasonable and just man to the conclusion that the alleged act has been committed is sufficient to sustain a conviction for adultery. (5 Groizard, C6digo Penal, pp. 24 et seq.; decision of the supreme court of Spain of June 23, 1874; 1. R. C. L., par. 28.) What is the proof, direct or circumstantial, in the present case?

Margarita Feliciano, the accused, was married to the complainant Felix Atacador on January 15, 1911. She left her husband on February 15, 1916. During the months of May, June, and a part of July of the same year, she lived

in a rented house in Manila with Pedro Velasquez. The owner, who lived in the upper part of the same house, considered them to be man and wife. A photograph shows their intimate relations. A witness testified to having seen the accused and Velasquez in scant apparel and sleeping together. The woman and her paramour had the opportunity to satisfy their adulterous inclination. We think that a finding to the effect that Velasquez and the accused had carnal relations is sufficiently in accord with the probabilities of the case and the proof.

The judgment of the lower court is affirmed with the addition of the accessory penalties and the costs. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Street, JJ., concur.

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