

MICHAEL G. VALENCIA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 244657. February 12, 2024

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

This Petition[1] assails the following dispositions of the Court of Appeals in CA G.R. CR No. 01715 titled *People of the Philippines v. Michael Valencia*:

- Resolution[2] dated October 10, 2018, affirming the conviction of petitioner Michael G. Valencia (Valencia) for adultery under Article 333 of the Revised Penal Code; and
- Resolution[3] dated January 15, 2019 denying his Motion for Reconsideration.

Antecedents

The Charge

In Criminal Case No. 44965-03, Rubirosa M. Ciocon (Rubirosa) and her alleged paramour, Valencia, were charged with adultery, viz.: [4]

That on or about 9:00 o'clock in the evening of December 2001 and sometime before and thereafter [in] General Santos City, Philippines and within the jurisdiction of this Honorable Court, said Rubirosa Ciocon, being then united in wedlock with the Private Complainant Ramon Chito A. Ciocon, did then and there wil[l]fully, unlawfully and feloniously have sexual intercourse with Michael [A.] Valencia[,] who is not her husband and her co-accused Michael [A.] Valencia, did then and there wil[l]fully, unlawfully and feloniously had carnal knowledge of her, knowing her to be married.[5]

On arraignment, Valencia pleaded not guilty to the charge against him.[6] Rubirosa remained at large.[7]

Prosecution's Version

Ramon Chito T. Ciocon (Ramon) testified that he married Rubirosa on August 19, 1991,[8] and that he is the father of Emmanuel Job Ciocon, Angelica Ciocon, Dane Ciocon, and Monaby Faith R. Ciocon (Monaby).[9] He was frequently out of the country, working as a 3[rd] engineer-seaman on a Japanese ship.[10] His wife, Rubirosa, operated a karinderya on Leon Llido Street, Lagao, General Santos City. She introduced Valencia to him as a customer of the karinderya. He later found out that his wife and Valencia were in a relationship.[11]

Every time he called home from abroad, it was his mother who answered the phone. The latter told him that "there is something wrong with his family" and that "he has to go home".[12] In August 2002, he went home to investigate and see for himself what was happening with his family.[13] It was only when he arrived that he discovered that his family left their house on Leon Llido Street, Countryside Subdivision, General Santos City to reside at Summerlight Subdivision, Polomolok, South Cotabato.[14] Subsequently, his daughter, Monaby, informed him that Rubirosa was living in the same house with Valencia.

He noticed that Rubirosa was uneasy whenever they were together. When he asked her what was going on, she cried and admitted that she was living with Valencia as they were in a relationship. Rubirosa admitted to loving Valencia and eventually left Ramon and his family.[15] Ever since, he no longer knew the whereabouts of Rubirosa.[16]

According to Ramon, the unfaithfulness of Rubirosa "was very painful" and "insulted his manhood." [17] He filed the case against Rubirosa and Valencia so that they could "pay for their sins and be imprisoned." [18]

Monaby identified Valencia in open court and testified that she is the daughter of Rubirosa and Ramon.[19] She observed that Valencia and Rubirosa were always together and that they were "loveable and sweet," [20] always hugging and kissing one another.[21]

When she was 8 years old, her family lived in a house at Countryside Subdivision. She and her siblings slept in the living room and noticed that Valencia was on the second floor and did not come down.[22] Out of curiosity, she went up to check on her mother. She opened the unlocked door, and in the illuminated room, she saw Rubirosa and Valencia together in bed, hugging and kissing each other.[23] When Rubirosa saw her, she got angry and shooed her away. After the incident, she chose to keep quiet because she was afraid of her mother.[24]

Monaby testified that Rubirosa and Valencia usually slept together in their house, although she could not tell if they were wearing undergarments, since they were always covered by a blanket. Every time she would see Valencia and her mother, the latter would get angry and tell her to get out of the room.[25]

When they moved to the house at Summerlight Subdivision, Monaby said that Rubirosa and Valencia continued to hug and kiss each other.[26] More, she saw Rubirosa and Valencia naked in the bedroom.[27] When she went to get the clothes of her brother, she saw Rubirosa on top of Valencia. As soon as she was able to retrieve her brother's clothes she left out of shock and fear.[28]

She recalled that her father Ramon went to Polomolok, South Cotabato "to patch things up" but Rubirosa refused to live with him.[29] Rubirosa then left, and they no longer had any information on her whereabouts.[30]

Defense's Version

Valencia testified that he was a supervisor at Ace Foods, Inc., a company which had an office a block away from Ramon's karinderya.[31] He was introduced to Ramon while he was eating at the said karinderya. He also admitted knowing Rubirosa from frequenting the karinderya. He nevertheless denied any sexual relations between himself and Rubirosa.[32]

Ruling of the Metropolitan Trial Court in Cities

By its Decision[33] dated January 18, 2016, the Metropolitan Trial Court in Cities (MTCC) found Valencia guilty of adultery and sentenced him to suffer the penalty of prision correccional in its medium period or imprisonment for two years, four months, and one day to four years and two months, viz.:

WHEREFORE, in view of the foregoing, finding the Accused, Michael Valencia, GUILTY beyond reasonable doubt of the crime of "Adultery", he is hereby sentenced to suffer the penalty of prision correccional in its medium period or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months.[34]

The MTCC held that the prosecution established all the elements of the crime beyond reasonable doubt.[35] It found that Monaby was a competent witness who provided straightforward testimony[36] and attested that Rubirosa and Valencia were frequently hugging and kissing, and that Valencia was always in their house at Countryside Subdivision.[37] Too, it noted that Valencia failed to explain why he was found in the house of Rubirosa although he is not her husband.[38] Apart from Valencia's mere denial, he did not present any evidence

that he was not at the place where the alleged sexual intercourse took place.[39] The MTCC concluded that strong circumstantial evidence and corroborative evidence are sufficient to sustain a conviction for adultery.[40]

The MTCC, however, refrained from discussing the acts allegedly committed by Valencia at Summerlight Subdivision, Polomolok, South Cotabato because the said place is beyond its territorial jurisdiction.[41]

By its Resolution[42] dated November 16, 2016, the MTCC denied Valencia's Motion for Reconsideration. It did not consider Valencia's claim that Ramon had already pardoned Rubirosa since Ramon and Rubirosa did not live as husband and wife after Ramon discovered Rubirosa's infidelity.[43] Further, contrary to Valencia's claim, proof of a physical sexual act is not necessary to convict one of adultery. Strong circumstantial evidence, such as the testimony of Monaby on the acts of Rubirosa and Valencia, is sufficient.[44]

Ruling of the Regional Trial Court

In its Decision[45] dated November 24, 2017, the Regional Trial Court (RTC) affirmed Valencia's conviction. On the claim that Ramon had pardoned Rubirosa, the RTC found that though Ramon slept with Rubirosa in the same house for six or seven days, he did not have sexual relations with her.[46] As for the presence of the elements of the crime, the RTC held that there was no doubt that Ramon and Rubirosa were married, and that Valencia knew about Rubirosa's marriage to Ramon.[47] With respect to the element of sexual intercourse, strong circumstantial evidence has been adduced to prove the same.[48]

By its Order[49] dated July 20, 2018, the RTC denied Valencia's Motion for Reconsideration.

Ruling of the Court of Appeals

By its Resolution[50] dated October 10, 2018, the Court of Appeals dismissed Valencia's appeal due to several procedural defects, viz.:

- The docket and other legal fees are not paid violating Sec. 1, Rule 42 of the Rules of Court. The DBP Manager's Check in the amount of P5,530.00 was not accepted by the Cashier of this Court due to superimposition in its reference number;
- The Office of the Solicitor General, as counsel for the State in all appealed criminal cases, was not furnished with a copy of the Petition disregarding Sec. 1, Rule 42, supra;
- The Petition lacks a Written Explanation why it was FILED and SERVED by mail disregarding Sec. 11, Rule 13, supra;
- The petitioner failed to show competent evidence of identity as affiant to the Verification and Certification of Non-Forum Shopping violating Sec. 12, Rule II of the 2004 Rules on Notarial Practice as amended by A.M. No. 02-8-13-SC dated February 19, 2008; and
- Documents which are material and referred to in the Petition such as the Judicial Affidavit of the accused-petitioner and the Decision of the MTCC-Branch 3, General Santos city dated January 18, 2016 are not appended to the Petition violating Sec. 2 (d), Rule 42, supra.[51]

The Court of Appeals denied Valencia's Motion for Reconsideration in its Resolution[52] dated January 15, 2019. The Court of Appeals held that Valencia had not corrected the procedural errors brought to his attention.[53] More important, bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel the suspension of procedural rules.[54]

The Present Petition

Valencia pleads anew for his acquittal.[55] He maintains that he must be benefited by the pardon allegedly extended by Ramon to Rubirosa since adultery cannot be prosecuted once the husband pardons either of the

adulterers.[56] Said pardon, according to Valencia, was manifested through Ramon's act of: (a) embracing Rubirosa, and (b) living with Rubirosa in the house at Summerlight Subdivision upon returning to the Philippines.[57]

Valencia likewise assails the credibility of Monaby and the probative weight of her testimony because the latter "was clearly doing her father a favor." [58] He also claims that her testimony "is contrary to human experience" because she was able to "remember all the details" of an incident which took place when she was 8 years old, although she testified before the MTCC when she was already 18 years old.[59] Most importantly, Valencia claims that Monaby did not actually see Valencia and Rubirosa having sexual intercourse in the house at Countryside Subdivision.[60] In all, Valencia alleges that the prosecution failed to prove all the elements of the offense beyond reasonable doubt.[61]

Lastly, Valencia stresses that the Court of Appeals should not have dismissed his appeal because his "subsequent and substantial compliance ... call[s] for the relaxation of the rules of procedure." [62]

Under Resolution dated July 8, 2019, the Court directed the Office of the Solicitor General (OSG) to file its comment.[63]

In its Comment[64] dated October 23, 2019, the OSG counters that the Court of Appeals correctly dismissed Valencia's appeal because the relaxation of procedural rules "applies only in proper cases and under justifiable causes and circumstances." [65] It argues that Valencia's unjustified noncompliance with the five procedural requirements clearly rendered his appeal fatally defective.[66]

Ruling

Preliminarily, we find that the Court of Appeals did not err in dismissing Valencia's appeal solely on procedural grounds. Rule 42, Section 3 of the Rules of Court clearly states the consequence of noncompliance with the prescribed procedure:

SECTION 3. Effect of failure to comply with requirements. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Although Valencia has shown that the Court of Appeals should have deemed the docket fees paid based on the Certification[67] dated February 8, 2019 issued by the Development Bank of the Philippines, the four other procedural infirmities observed by the Court of Appeals remain unexplained and unrectified. As such, Valencia's perfunctory invocation of "the interest of justice"[68] cannot prevail against his repeated noncompliance with procedural rules. *D.M. Wenceslao and Associates, Inc. v. City of Paranaque*[69] is in point:

[P]rocedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed.[70]

Further, a petition for review on certiorari is narrowly confined to any of these two grounds: i.e., (a) when the court a quo has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or (b) when the court a quo has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.[71]

Absent any of these grounds cited or shown in the petition, there is no special reason to warrant the exercise of the Court's discretionary appellate jurisdiction here. To stress, the present Petition is a mere reiteration of the

arguments already raised and passed upon in full by the MTCC and the RTC, and which were not considered by the Court of Appeals due to Valencia's own procedural lapses. Verily, the Petition should be denied outright.

In any event, whether Valencia committed the adulterous act of engaging in sexual intercourse with a married woman not his wife, as narrated no less by Monaby, Rubirosa's own minor daughter and whether the offended husband has pardoned his unfaithful wife, are both pure questions of fact beyond the cognizance of the Court via Rule 45.[72]

Relatedly, when the issue is one of credibility of witnesses, the Court will generally not disturb the trial courts' factual findings.[73] Indeed, trial courts are in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Here, both the MTCC and RTC found minor Monaby's testimony credible.[74] Valencia has not adduced any convincing reason for the Court to depart from said findings.

As well, the Court finds no error in Valencia's conviction for adultery. First, Rubirosa and Ramons marriage was established by Ramon's presentation of their marriage contract showing that the couple had married on August 19, 1991. Second, Valencia admitted in his own affidavit cited by the MTCC that he knew Ramon as well as Ramon's wife, Rubirosa, because he frequented their karinderya, which was the only karinderya within the vicinity of his office.

Finally, as correctly held by the courts a quo, proof of the sexual intercourse between a married woman and a man who is not her husband may be established by circumstantial evidence.[75] In *United States v. Feliciano*, [76] the Court held that due to the nature of the crime of adultery, there may be some difficulty in establishing the elements of the offense by direct evidence. The Court therein considered the following circumstances sufficient to sustain a conviction for adultery:[77]

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. 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.[78]

Undeniably, similar circumstances that have been considered as sufficient for conviction are also present in this case. Ramon had been away working abroad as a seaman. He came home because he was cautioned that something was going on with his family. He did not even know that his family had moved to another house. More, Rubirosa herself admitted her relationship with Valencia. Monaby testified that Rubirosa and Valencia were always hugging and kissing each other and that they would even sleep together while covered by a blanket.

All things considered, these circumstances show that in the absence of Ramon and by living with Rubirosa, Valencia had the opportunity to commit adultery. In fact, Monaby had seen Rubirosa on top of Valencia, naked. There can be no other conclusion other than that sexual congress had taken place between Valencia and Rubirosa. Her betrayal of their marriage vows is apparently known even by those outside their household. Further, even if

the Court does not consider Rubirosa's admission to Ramon of her relationship with Valencia, the testimony of Monaby amply stands to sustain Valencia's conviction for adultery.

ACCORDINGLY, the Petition is DISMISSED and the assailed Resolutions of the Court of Appeals dated October 10, 2018 and January 15, 2019 in CA G.R. CR No. 01715 are AFFIRMED.

In Criminal Case No. 44965-03, petitioner Michael G. Valencia is CONVICTED of adultery under Article 333 of the Revised Penal Code. He is sentenced to prision correccional in its medium period or imprisonment for two years, four months, and one day to four years, and two months.

SO ORDERED.

M. Lopez, J. Lopez, and Kho, Jr., JJ., concur.

Leonen, SAJ. (Chairperson), I dissent. See separate opinion.

[1] Rollo, pp. 3-15; By Atty. Christy Joy S. Sollesta.

[2] Id. at 49-50; Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Tita Marilyn Payoyo-Villordon and Walter S. Ong of the Special Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[3] Id. at 52-53; Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Tita Marilyn Payoyo-Villordon and Walter S. Ong of the former Special Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[4] Id. at 20.

[5] Id.

[6] Id. at 21.

[7] Id.

[8] Id. at 25.

[9] Id. at 24.

[10] Id. at 25.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id. at 22 and 25.

[16] Id. at 24-25.

[17] Id. at 25.

[18] Id.

[19] Id. at 22.

- [20] Id.
- [21] Id. at 23.
- [22] Id.
- [23] Id.
- [24] Id.
- [25] Id.
- [26] Id.
- [27] Id.
- [28] Id.
- [29] Id. at 24.
- [30] Id.
- [31] Id. at 26.
- [32] Id.
- [33] Id. at 20-32; Penned by Presiding Judge Alejandro Ramon C. Alano.
- [34] Id.
- [35] Id. at 29.
- [36] Id. at 30.
- [37] Id. at 29.
- [38] Id.
- [39] Id. at 29-30.
- [40] Id.
- [41] Id. at 31.
- [42] Id. at 33-36; Penned by Acting Presiding Judge Joseph A. Palmes.
- [43] Id. at 33-34.
- [44] Id. at 35-36.
- [45] Id. at 38-41; Penned by Presiding Judge Joyce Kho Mirabueno.
- [46] Id. at 40.
- [47] Id.
- [48] Id. at 41.
- [49] Id. at 46-48; Penned by Presiding Judge Joyce Kho Mirabueno.
- [50] Id. at 49-50.

[51] Id.

[52] Id. at 52-53.

[53] Id. at 53.

[54] Id.

[55] Id. at 3-15; By Atty. Christy Joy S. Sollesta.

[56] Id. at 7-8.

[57] Id. at 7-10.

[58] Id. at 10.

[59] Id.

[60] Id. at 11.

[61] Id. at 11-12.

[62] Id. at 12-14.

[63] Id. at 63.

[64] Id. at 73-80; By Solicitor General Jose C. Calida, Assistant Solicitor General Marissa Macaraig-Guillen, and State Solicitor I Jillian Marie B. Co.

[65] Id. at 76.

[66] Id. at 78.

[67] Id. at 54.

[68] Id. at 12-14.

[69] 672 Phil. 35 (2011) [Per J. Villarama, Jr., First Division].

[70] Id. at 45.

[71] RULES OF COURT, Rule 45, Section 6.

[72] Section 1 of Rule 45 provides:

Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis supplied)

[73] *People v. Mabalo*, 848 Phil. 173, 183 (2019) [Per J. Peralta, Third Division]; see also *People v. Bay-Od*, 845 Phil. 644, 651 (2019) [Per J. Peralta, Third Division].

[74] *Rollo*, pp. 30 and 40-41.

[75] *United States v. Feliciano*, 36 Phil. 755 (1917) [Per J. Malcolm, En Banc]; *United States v. Legaspi*, 14 Phil. 38 (1909) [Per J. Carson, First Division]; and *Mortiga v. Serra*, 5 Phil. 35 (1905) [Per J. Willard, En Banc].

[76] 36 Phil. 753 (1917) [Per J. Malcolm, En Banc].

[77] Id.

[78] Id. at 754-755.

DISSENTING OPINION

LEONEN, SAJ.:

I dissent.

No less than the Constitution requires proof beyond reasonable doubt to prove the guilt of an accused.[1] For the crime of adultery, there should be a strict interpretation of the elements of the crime because conviction in criminal actions requires proof beyond reasonable doubt.[2] Mere circumstantial evidence is not sufficient to overcome this requirement-

"Proof beyond reasonable doubt" means that

mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account.[3] (Citations omitted)

Petitioner Michael Valencia (Valencia) and his co-accused, Rubirosa M. Ciocon (Rubirosa) were charged with adultery, punished under Article 333 of the Revised Penal Code, which provides:

Article 333. Who are guilty of adultery. — Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by prisión correccional in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed. (Emphasis supplied)

I

For a crime of adultery to prosper, it is necessary that the woman must be married, that she engaged in sexual intercourse with a man not her husband, and that her paramour must be aware that she is married to another man.

It appears on record that private complainant Ramon Ciocon (Ramon) presented a marriage contract, showing that he and Rubirosa were married on August 19, 1991.[4] Thus, the first element was sufficiently proven to exist.

As to knowledge of the married status of the woman, the evidence presented by petitioner shows that he knew Ramon and Rubirosa to be husband and wife.[5] Portions of petitioner's judicial affidavit were cited in the decision of the Municipal Trial Court in Cities:

That he is of legal age, Filipino, married, and a resident of Bgy. General Paulino Santos, Koronadal City, South Cotabato.

That he knows the Private Complainant, who owns a carenderia, at Leon Llido St, General Santos City, as the former was introduced to him which [sic] he was eating there.

He also knows his wife, Rubirosa Ciocon as he and his salesmen were eating in the said carenderia, as he was a supervisor of Ace Foods, Inc. which office is only a block away, and the carenderia is the only one within the

vicinity.[6] (Emphasis supplied)

Petitioner's admission proves the existence of the third element of adultery.

As to the second element, or the act of sexual intercourse, it cannot be gleaned that sexual intercourse had indeed taken place. None of the prosecution witnesses testified that sexual intercourse between petitioner and Rubirosa took place. Ramon said that he was not around when the alleged incident happened since he was working abroad. Monaby Faith Ciocon (Monaby), Rubirosa and Ramon's daughter, testified that she only saw petitioner and her mother hugging and kissing.[7]

Monaby further testified that petitioner and her mother "usually slept together, although she does not know if they were wearing undergarments, as they were always covered by blanket." [8] Monaby testified in court as follows:

Q:

So you went up and check, what did you find out?

A:

I saw them hugging and he is kissing my mother?

Q:

That is all you saw at that time at Countryside Subdivision?

A:

They were together in bed.

Q:

But they were only hugging and kissing?

A:

That is only what I saw.[9] (Emphasis supplied)

Clearly, Monaby did not see the actual act of sexual intercourse. Thus, her testimony is not sufficient to establish the second element of adultery.

Moreover, since Rule 133, Section 3 of the Rules of Court provides that "[a]n extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti," the admission made by Rubirosa to Ramon that she had sexual relations with petitioner cannot be given weight as it was only him who was present when his wife confessed to him and the same will stay as hearsay and self-serving if not ascertained or confirmed by any witness or any other supporting evidence.

Rubirosa allegedly admitted to having a relationship with petitioner--accused, but this is not equivalent to admission that sexual intercourse took place with a person not her husband.

Here, if the testimonies of Ramon and Monaby are to be taken together, a doubt as to the guilt of petitioner will exist for they are not sufficient to provide a strong circumstantial and corroborative evidence to convict petitioner of the crime of adultery.

We recognize that this Court previously ruled in *United States v. Legaspi*[10] that:

Proof of the commission of the crime of adultery, like proof of the commission of most other crimes, may safely be rested on circumstantial evidence when that evidence is such that it leaves no room for reasonable

doubt of the guilt of the accused, and ... convictions for this crime have frequently been had without direct evidence as to the specific acts constituting the offense[.][11]

United States v. Feliciano[12] also recognized that it may be difficult to directly witness the act of sexual intercourse:

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 ... 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.[13]

However, we must not forget that the Constitution grants the presumption of innocence in favor of the accused.[14] Thus, we should strictly construe the element of sexual intercourse. It may be difficult to prove, but it is also easy to fabricate accusations of adultery.

To be clear, it is my opinion that petitioner should be acquitted on the ground of reasonable doubt. The evidence presented by the prosecution, when taken together, do not present strong circumstantial and corroborative evidence to uphold petitioner's conviction for the crime of adultery.

II

Another reason for ensuring that the evidence presented is beyond reasonable doubt in adultery is because the Court, as a protector of constitutional rights, should never allow a situation where women are at a disadvantage compared to men. For instance, there is an apparent inequality between the crimes of concubinage and adultery. Both are crimes against chastity and involve married couples engaging in affairs outside of the marital bond.

Adultery is committed by a wife, with a man who knows her to be married, "even if the marriage be subsequently declared void." [15] One act of sexual intercourse is one count of adultery.[16] The penalty imposable on the wife and the man is the same.

Concubinage is committed by a husband, with a woman other than his wife.

We take a look at the provisions on concubinage and adultery from the old Penal Code to present.

Provisions under Articles 434 and 437 of the old Penal Code provide:

Article 434 of the [Penal Code] says:

"No penalty shall be imposed for the crime of adultery except upon the complaint of the aggrieved spouse.

"The aggrieved spouse can only file such a complaint against both offenders, if both are living, and not at all if he or she has consented to the adultery or pardoned either of them." [17]

Article 437 of the Penal Code says:

"The husband who shall keep a concubine in his home, or out of it with scandal, shall be punished with the penalty of prision correccional in its minimum and medium degrees.

"The concubine shall be punished with banishment.

"The provisions of articles 434 and 435 are applicable to the case referred to in this article." [18]

Act No. 1773[19] was enacted in October 11, 1907, which amended a portion of the old Penal Code. Adultery was one of the crimes reclassified into a public crime under the said act. Worthy to note is Section 2, which stated that pardon does not extinguish liability or bar prosecution for adultery. Concubinage remained to be a private crime, barred by consent or pardon:

Section 2. Condonation, pardon, or remission of penalty by the aggrieved person or the parents, grandparents, or guardian of such person shall in no way extinguish the liability of the guilty person or 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: PROVIDED, HOWEVER, That in cases of estupro, rapto, or violation the legal marriage of the accused or convicted person to the aggrieved person shall extinguish such criminal liability.

Maulit v. Samonte,[20] decided at a time when the old Penal Code as amended by Act No. 1773 was still in effect, involved concubinage. Maulit was found guilty, but before he could start serving his sentence, his wife executed an affidavit stating that she was granting full pardon. Maulit was still imprisoned on the ground that under Act No. 1773, concubinage could no longer be extinguished by condonation or pardon. Maulit's wife filed a petition for the issuance of a writ of habeas corpus. The writ was granted, and Maulit was released. The Provincial Fiscal filed an appeal. This Court affirmed the trial court's decision and mentioned that:

It may be true that concubinage is not much better than adultery and that the two crimes are similar in nature. But it is evident from the language of articles 433 and 437 of the Penal Code that the authors thereof considered concubinage a lesser offense than adultery and therefore prescribed separate and different penalties for the two offenses. As far as concubinage is concerned, there is no provision in Act No. 1773, or in any other act, which directly indicates that it is a public crime and that the penalty for concubinage cannot be remitted under article 435 of the Penal Code. It must also be remembered that we are dealing with a criminal statute and consequently are bound to construe it in favor of the accused.[21]

Even under the Revised Penal Code, both adultery and concubinage involve acts of infidelity yet adultery is considered as the graver offense, based on the elements that must be proven and the penalty imposable. As currently written:

Article 333. Who are guilty of adultery. — Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by prision correccional in its medium and maximum periods.

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed.

Article 334. Concubinage. — Any husband who shall keep a mistress in the conjugal dwelling; or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prision correccional in its minimum and medium periods.

The concubine shall suffer the penalty of destierro.

Ocampo v. People[22] states that concubinage may be committed in three different ways: (1) by keeping a mistress in the conjugal dwelling; (2) by having sexual intercourse, under scandalous circumstances, with a woman who is not his wife; and (3) by cohabiting with such woman in any other place.[23] It further explained the term "cohabit" thus:

The term "cohabit" means to dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse. And, whether an association, for illicit intercourse, has been such as to constitute an unlawful assumption of the conjugal relation, is, in every case a question of fact, and the extent of such association as to constitute a cohabitation within the meaning of the law, is a matter of court's appreciation.[24] (Citations omitted)

A comparison of concubinage and adultery indicates the defects in the law punishing it as crimes against chastity.

Concubinage is harder to prove but carries a lighter penalty. In concubinage, the cohabitation must be for a period of time. In adultery, one act of sexual intercourse is sufficient.

In concubinage, the husband may be given a penalty of prision correccional in its minimum and medium periods, while the woman is meted the penalty of destierro.

Further, it seems that prosecution for concubinage is more easily barred on the ground of consent than adultery.

In *United States v. Rivera*,^[25] the wife was deemed to have given consent to her husband's concubinage because of her inaction. This Court ruled:

The long period of time over ten years that elapsed during which her husband Juan Rivera was separated from her after 1902 and living in marital relations with Rafaela Vitug, without its having occurred to her to denounce such unlawful conduct, although they all lived in the town of Lubao, where the immoral life her husband was leading with the defendant Vitug was public and notorious, is proof of her consent thereto, and if only in June 1912, it occurred to her to accuse him of adultery, although a few days later she desisted from her complaint and on the next day by common accord they executed the agreement of separation set forth in the document at page 44, ratified before a notary, the injured party has by such conduct demonstrated in an indubitable manner that if before 1912 she had given her consent to the illegal conduct of her husband, later she ratified it in a document setting forth that she withdrew the complaint she had presented and in the agreement of separation of which mention has been made.^[26]

In *Matubis v. Praxedes*,^[27] Matubis filed a complaint for legal separation against her husband Praxedes. The trial court found that there was concubinage, which is a ground for legal separation, but dismissed the complaint because it was filed beyond the prescriptive period and there was consent between Matubis and Praxedes on living separately with other partners. The agreement between Matubis and Praxedes reads:

... (a) That both of us relinquish our right over the other as legal husband and wife.

(b) That both of us is free to get any mate and live with as husband and wife without any interference by any of us, nor either of us can prosecute the other for adultery or concubinage or any other crime or suit arising from our separation.

(c) That I, the wife, is no longer entitled for any support from my husband or any benefits he may receive thereafter, nor I the husband is not entitled for anything from my wife.

(d) That neither of us can claim anything from the other from the time we verbally separated, that is from May 30, 1944 to the present when we made our verbal separation into writing.^[28]

This Court upheld the ruling of the trial court and explained that the condonation and consent was expressly made. Since Matubis consented to her husband's concubinage, she could no longer file a complaint for legal separation.^[29]

It may be fairly argued that adultery does not injure the general public because it involves marital infidelity, which is a matter between husband and wife only. *Arroyo, Jr. v. Court of Appeals*^[30] elucidated the reason why adultery is punishable as a crime:

Enforcement of our law on adultery is not exclusively, nor even principally, a matter of vindication of the private honor of the offended spouse; much less is it a matter merely of personal or social hypocrisy. Such enforcement relates, more importantly, to protection of the basic social institutions of marriage and the family in the preservation of which the State has the strongest interest; the public policy here involved is of the most fundamental kind. In Article II, Section 12 of the Constitution there is set forth the following basic state policy: "The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic

autonomous social institution. x x x"

The same sentiment has been expressed in the Family Code of the Philippines in Article 149:

"The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom practice or agreement destructive of the family shall be recognized or given effect." [31]

Our criminal law imposes a high standard in determining whether pardon was truly given by the offended spouse. Yet, the State has an interest in protecting the sanctity of family life.

Article II of the Constitution provides:

ARTICLE II

Declaration of Principles and State Policies

....

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

In addition, Article XV is dedicated solely to the family:

ARTICLE XV

The Family

Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Section 3. The State shall defend:

(1)

The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

(2)

The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;

(3)

The right of the family to a family living wage and income; and

(4)

The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

Section 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

Thus, we must strike a balance between our Constitution and criminal laws. Perhaps sexual intercourse should not be the only act that can be considered as pardon in adultery. Other acts that would show reconciliation between the offending spouse and offended spouse should be considered as pardon because it aids in the preservation and protection of family life.

III

It is a basic principle that the State is the offended party in criminal actions. This is so because the commission of crimes is considered "a breach of the security and peace of the people at large, an outrage against the very sovereignty of the State."^[32] Thus, "[c]rimes are punished as retribution so that society would understand that the act punished was wrong."^[33] As explained by this Court:

A criminal action, where "the State prosecutes a person for an act or omission punishable by law," is thus pursued "to maintain social order." It "punish[es] the offender in order to deter him [or her] and others from committing the same or similar offense, ... isolate[s] him [or her] from society, reform[s] and rehabilitate[s] him [or her]." One who commits a crime commits an offense against all the citizens of the state penalizing a given act or omission: "a criminal offense is an outrage to the very sovereignty of the State[.]" Accordingly, a criminal action is prosecuted in the name of the "People" as plaintiff.^[34] (Citations omitted)

Considering the underlying reason for the existence of criminal actions, it is difficult to reconcile how acts that constitute adultery and concubinage fall within their scope. Issues of marital infidelity are, at its core, private matters between two married individuals. When one engages in marital infidelity, it is only the family unit that is directly affected. In fact, such transgressions are rarely made known to the public, much less to the State.

The private nature of marital infidelity is emphasized in the Revised Penal Code, as "crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse."^[35] The State, on its own, cannot initiate a criminal complaint for these crimes as it is not an offended party.

The reason is simple: Marital infidelity is not "a breach of the security and peace of the people at large, an outrage against the very sovereignty of the State."^[36]

Adultery and concubinage are not "crimes" in the true sense of the word.

The relationship between two married individuals, including deviations from the marriage contract, is a private matter that does not require any government interference. There is no public interest to protect or act that requires penal sanctions. Thus, to allow private citizens to utilize the strong arm of the law to punish those who commit marital infidelity is a disproportionate remedy for the nature of the action.

IV

This debate between concubinage and adultery poses the question of whether we should now start looking at the issue from a "substantive sex equality approach."^[37] This approach is explained as:

[n]ot whether men and women are the same or different, are treated the same or differently, and whether the two fit, although that can indicate a substantive problem. It asks fundamentally whether a law promotes equality or inequality on the basis of sex in a domain in which the sexes are socially unequal, specifically whether gender hierarchy and sex-based dominance, or its progressive dissolution, is promoted.^[38] (Citation omitted)

Our law and jurisprudence on concubinage and adultery discriminates on the basis of sex because of the harsher penalty that is imposed on women. Again, both crimes involve acts of marital infidelity but the elements that must be proven and the penalties imposable on the offender and the paramour differ. One act of sexual intercourse with a man not her husband equates to adultery, but one night with a woman not his wife is not sufficient to say that

concubinage exists.

Various provisions in our Constitution recognize that there should be fundamental equality between men and women, and that the State should take an active role in safeguarding fundamental equality. Article II, Section 14 and Article III, Section 1 provide:

ARTICLE II

Declaration of Principles and State Policies

....

Section 14. The State recognizes the role of women in nation--building, and shall ensure the fundamental equality before the law of women and men.

....

ARTICLE III

Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (Emphasis supplied)

In *Saudi Arabian Airlines v. Rebesencio*,^[39] we discussed that:

Article II, Section 14 of the 1987 Constitution provides that "[t]he State ... shall ensure the fundamental equality before the law of women and men." Contrasted with Article III, Section 1 of the 1987 Constitution's statement that "[n]o person shall ... be denied the equal protection of the laws," Article II, Section 14 exhorts the State to "ensure." This does not only mean that the Philippines shall not countenance nor lend legal recognition and approbation to measures that discriminate on the basis of one's being male or female. It imposes an obligation to actively engage in securing the fundamental equality of men and women.^[40]

To restate, guaranteeing fundamental equality is on a tier higher than mere protection of the law, and requires State intervention. Article III, Section 1 is a passive duty, while Article II, Section 14 requires active involvement by the State.

The Judiciary also has the positive duty of ensuring that men and women enjoy the equal protection of the laws. Article VIII of the Constitution provides:

ARTICLE VIII

Judicial Department

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

....

Section 5. The Supreme Court shall have the following powers:

....

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the

underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (Emphasis supplied)

In *Halagueña v. Philippine Airlines, Inc.*,^[41] we declared as void the stipulation in the Collective Bargaining Agreement that provided for an earlier compulsory retirement age for female cabin attendants, but not for men. We further stated in *Halagueña*:

As a State Party to the CEDAW, the Philippines, including the judiciary as a State instrumentality, bound itself to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."^[42]

Courts are duty-bound to render decisions that do not discriminate women simply because they are women. Still, there are instances when courts are limited to what the law provides. In this case, the impossible penalty upon the wife is imprisonment, which is clearly excessive compared to the penalty imposed on husbands who are found guilty of concubinage. On this matter, the Court should apply Article 5 of the Revised Penal Code which provides:

Article 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. – Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

Further, the Philippines is a signatory to the Convention on the Elimination of all Forms of Discrimination against Women, where it provides that "States Parties shall accord to women equality with men before the law."^[43]

Lest I be misunderstood, I am not condoning acts that are harmful to the family. However, it is my opinion that it is high time we recognize that there are still laws that place women on a lower pedestal than men.

I recognize that our body of laws have come a long way to put women on equal footing with men. For example, we have the Anti-Violence Against Women and Their Children Act,^[44] the Magna Carta of Women,^[45] the Responsible Parenthood and Reproductive Health Act,^[46] and the Safe Spaces Act,^[47] to name a few. Yet, a lot of work still has to be done.

ACCORDINGLY, I vote to GRANT the Petition.

[1] CONST. art. III, sec. 14(2) provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly

notified and his failure to appear is unjustifiable.

[2] *People v. Que*, 824 Phil. 882 (2018) [Per J. Leonen, Third Division].

[3] *Cabarios v. People*, 911 Phil. 415, 440-441 (2021) [Per J. Lazaro-Javier, First Division].

[4] *Rollo*, p. 27.

[5] *Id.* at 26.

[6] *Id.*

[7] *Id.* at 23.

[8] *Id.*

[9] *Id.* at 11.

[10] 14 Phil. 38 (1909) [Per J. Carson, En Banc].

[11] *Id.* at 40.

[12] 36 Phil. 753 (1917) [Per J. Malcolm, En Banc].

[13] *Id.* at 754.

[14] CONST. art. III, sec. 14 (2) provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[15] REV. PEN. CODE, art. 333.

[16] *People v. Zapata*, 88 Phil. 688 (1951) [Per J. Padilla, En Banc].

[17] *United States v. Rivera*, 28 Phil. 13, 17 (1914) [Per J. Torres, En Banc].

[18] *Id.* at 16-17.

[19] Act No. 1773 (1907), An Act to Provide for the Public Prosecution of the Crimes of Adulterio, Estupro, Rapto, Violacion, Calumnia, and Injuria, to Abolish the Right of Pardon by the Aggrieved Party in such cases, to provide for a Special Civil Action for Damages therein, and for Other Purposes.

[20] 55 Phil. 410 (1930) [Per J. Ostrand, First Division].

[21] *Id.* at 413.

[22] 72 Phil. 268 (1941) [Per J. Moran, First Division].

[23] *Id.* at 269.

[24] *Id.*

[25] 28 Phil. 13 (1914) [Per J. Torres, En Banc].

- [26] Id. at 17-18.
- [27] 109 Phil. 789 (1960) [Per J. Paredes, First Division].
- [28] Id. at 790.
- [29] The case of *Matubis v. Praxedes* was decided before the Family Code took effect.
- [30] 280 Phil. 808 (1991) [Per J. Feliciano, First Division].
- [31] Id. at 823.
- [32] *Baviera v. Paglinawan*, 544 Phil. 107, 119 (2007) [Per J. Sandoval-Gutierrez, First Division].
- [33] *People v. Quintos*, 746 Phil. 809, 833 (2014) [Per J. Leonen, Second Division].
- [34] *Ha Datu Tawahig v. Prosecutor Lapinid*, 850 Phil. 137, 159-160 (2019) [Per J. Leonen, Third Division].
- [35] REV. PEN. CODE, art. 344.
- [36] *Baviera v. Prosecutor Paglinawan*, 544 Phil. 107, 119 (2007) [Per J. Sandoval-Gutierrez, First Division].
- [37] Catharine A. MacKinnon, *The Road Not Taken: Sex Equality in Lawrence v. Texas*, 65 OHIO ST. L.J. 1081 (2004).
- [38] Id. at 1085-1086.
- [39] 750 Phil. 791 (2015) [Per J. Leonen, Second Division].
- [40] Id. at 830-831.
- [41] G.R. No. 243259, January 10, 2023 [Per J. Leonen, En Banc].
- [42] Id., citing Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, art. 5(a).
- [43] Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, art. 15.
- [44] Republic Act No. 9262 (2004).
- [45] Republic Act No. 9710 (2009).
- [46] Republic Act No. 10354 (2012).
- [47] Republic Act No. 11313 (2019).

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