

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VICENTE MARIANO, DEFENDANT AND APPELLANT.

G.R. No. 28144. August 26, 1927

Ponente: ROMUALDEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-28144/>

ROMUALDEZ, J.:

This case is before this court on appeal. The accused was charged with the crime of abuse against chastity, and after trial the Court of First Instance of Manila convicted him of said crime, sentencing him to three years, six months and twenty-one days prison correctional, with the accessories of the law and the costs of the action.

The accused appealed to this court from said judgment. On August 3, 1927, he filed a motion praying for the dismissal of the case as he had married the offended party according to the marriage certificate attached to said motion.

The Attorney-General entered an opposition to said petition wherein, after discussing the scope of article 448 of the Penal Code and Act No. 1773 of the Philippine Legislature amending said article, he concluded that the marriage of the accused with the offended party cannot extinguish his liability as perpetrator of the crime of abuse against chastity.

There is no question as to the marriage, as evidenced by the proper certificate attached to the record of the present case. Neither is it disputed that the accused and the offended party in this case are the parties who contracted said matrimony.

The question is a purely legal one and sifts down to whether or not section 2 of Act No. 1773 includes the crime of abuse against chastity among those cases in which criminal liability is extinguished by the marriage of the accused with the offended party. Said section reads as follows:

"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 of convicted person to the aggrieved person shall extinguish such criminal liability."

Narrowing down the question still further, the point to determine is whether the crime of rape mentioned in the last part of the section just quoted includes abuse against chastity. If it does, the petition of the accused-appellant should be granted and this action dismissed, as his criminal liability has been extinguished by virtue of his marriage with the offended party. Otherwise, there is no such extinction of liability and, consequently, this action cannot be dismissed.

The crimes of rape and abuse against chastity are provided for and penalized in the same chapter of the Penal Code, namely, Chapter II, Title 9, Book II. It is true that said chapter, in its caption, does not give the same name

to both crimes, but says "Rape and Abuse Against Chastity," devoting the first article of said title, that is, article 438, to rape, and the second, namely, article 439, to abuse against chastity. It is clear that the crime of rape, which has for an element, among others, the intention to lie, cannot, nor should it, be confounded with abuse against chastity where such intention is not an essential element. This circumstance, however, does not prevent these two crimes from being of the same nature. That is why the illustrious commentator of the Spanish Penal Code, Mr. Pacheco, in speaking of abuse against chastity, says the following:

"Art. 363 (439 of the Penal Code of the Philippines) speaks of the outrages and violations which are consummated by the violator lying with the violated; it speaks of the same kind of violence, but without that complete consummation; committing lascivious acts upon persons of either sex." (Pacheco, Penal Code, vol. 3, p. 129, 6th ed.)

That this is so is shown by the fact that when the complaint alleges acts which constitute consummated, frustrated or attempted rape, and the facts proved at the trial do not show any of the three degrees of rape, but only some lewd acts which are not included in the category of attempted rape, the accused may, under such a complaint, be convicted of abuse against chastity, because the courts hold that this last crime is included in that of rape. Cases to this effect wherein such complaints were filed may be cited from the records of this court.

Article 448 of our Penal Code, cited by the Attorney General, is modified by Act No. 1773, and the accused does not invoke the provisions of said article but of Act No 1773. The doctrines laid down by the courts and the commentaries of Spanish writers on said article as to whether or not the crime of abuse against chastity is included cannot serve as authority for the interpretation of section 2 of Act No. 1773 of the Philippine Legislature.

The intention of our Legislature in enacting said Act No. 1773 was that the marriage of the accused or convict with the offended party should extinguish the criminal liability in the cases of seduction, abduction and rape and those involving offenses included in said crimes, such as frustrated or attempted seduction, abduction or rape. This is clear and logical. If the liability for a crime is extinguished in the graver cases, it must be extinguished, and for a stronger reason, in the lesser crimes. Now then, if the crime of abuse against chastity is not denominated rape, it is only for the lack of the intention to lie, both crimes being identical in every other respect, though of different degrees of gravity. For this reason, in regard to the kind of crimes for which the Legislature wished to provide extinction of liability by reason of marriage, abuse against chastity cannot but be held included in the crime of rape without misinterpreting the intention of the law, or thwarting its lofty and wholesome purposes.

We therefore conclude that the crime of abuse against chastity is included in the crime of rape mentioned in section 2 of Act No. 1773 and, consequently, the marriage of the accused with the offended party in the present case has extinguished his criminal liability.

For the foregoing, the case is finally dismissed, with the costs of this instance de oficio. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, and Villa-Real, JJ., concur.

DISSENTING :

MALCOLM, J.,

Act No. 1773 of the Philippine Commission was enacted to modify and supplement the Spanish Penal Code (Act jfo. 1773, sec. 4). Section 2 of the Act includes as a proviso, "That in cases of estupro, raptio, or violation the legal marriage of the accused or convicted person to the aggrieved person shall extinguish such criminal liability." The cases of estupro, raptio, and violacion as here specified naturally refer back to the same crimes of estupro, raptio,

and violation mentioned in section 1 of the Act and there described "as defined by the Penal Code of the Philippine Islands." But the law does not contain such a proviso with reference to the case or crime of abusos deshonestos. As a consequence, it is going a long way to assume that when the legislative body specifically named the crime of violacion it had in mind to include all crimes which might be decided under a prosecution for violacion. That such would not be a proper construction of the Penal Code with which Act No. 1773 connects, is clearly disclosed by Viada's commentaries on article 463 of the Spanish Penal Code corresponding to article 448 of the local code, and the decision of the Supreme Court of Spain of November 10, 1886, In the said decision, it was said "that said paragraph 4 of article 463 does not mean any other crime than seduction, rape, and abduction which are mentioned in the same article, all other crimes being excluded from the definite and restrictive exception precisely established in said legal provision, etc." (Viada, vol. 3, p. 158.)

The coordinate branch of the Government charged with the duty to legislate having disclosed its intent by not including the crime of abusos deshonestos as one extinguished y marriage, the court should not, by judicial legislation, provide for what the Legislature did not intend. Accordingly, I agree with the Attorney-General, and am opposed sanctioning the dismissal of this case.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.