

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. AGAPITO FRANCISCO AND JOSEFINA MANTELO, DEFENDANTS AND APPELLANTS.

G.R. No. 29531. December 29, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

On August 26, 1927, Patrocinio David de Francisco presented the following complaint to the Court of First Instance of Manila:

"For the effects of the law establishing divorce, the undersigned denounces and accuses Agapito Francisco and Josefina Mantelo of the crime of concubinage committed as follows:

"That on or about August 25, 1927, and for several years prior to that date, in the City of Manila, Philippine Islands, the said Agapito Francisco, being legally married to the undersigned, voluntarily, illegally, and criminally, cohabited and had sexual intercourse with his coaccused, Josefina Mantelo, with whom he lived as husband and wife during said period, with public scandal; that in said period and place the said Josefina Mantelo, voluntarily, illegally, and criminally, cohabited and had sexual intercourse with her coaccused, the aforesaid Agapito Francisco, with whom she lived in concubinage, with public scandal, knowing that said Agapito Francisco was and is a married person, with infraction of the law.

"(Sgd.) PATROCINIO DAVID DE FRANCISCO

"Denunciante"

It appears from the evidence that the complainant and the accused Agapito Francisco, were legally married on February 1, 1910. On December 30, 1922, the relations between the spouses became strained due to the fact that the wife had ascertained that the husband had maintained illicit relations with another woman, and she threatened him with separation if he did not mend his ways. The husband promised improvement and, to demonstrate his sincerity, confessed that he had two children with his codefendant, Josefina Mantelo, and proposed that if she, the wife, would allow him to pay P200 a month to said children, he would discontinue his relations with Josefina. To this proposition the wife agreed and continued to live with her husband until 1925, when they separated after executing an agreement in writing to that effect. The agreement, among other things, contains the following clauses:

"Whereas as it has become impossible for the husband and the wife to live together due to the fact that the former has sustained intimate relations with one Josefina Mantelo and that as a result of said relations, a child, by the name of Josefina, was born on the 11th of June, 1921, and baptized in the Catholic Parochial Church in Quiapo, Manila, on the 7th of January, 1923, and that another child named Dolores Loreto was born on December 10, 1922, and baptized in the same church on June 10, 1923, and that a male child was born on December 30, 1924;

"4. This contract will subsist as long as both parties comply faithfully with each and all of its terms; but

nothing that has here been stipulated signifies renunciation of any rights which each of the parties named have under the law."

The accused continued their illicit relations, and on February 24, 1927, still another child was born, whereupon the present action was brought on August 26, 1927.

Upon trial the court below found the defendants guilty as charged in the complaint and sentenced Agapito Francisco to one year, eight months and twenty-one days of prision correccional with the accessory penalties and, likewise, sentenced Josefina Mantelo to suffer two years, four months and one day of banishment. From this sentence the defendants appealed.

The crime alleged to have been committed is concubinage as defined by article 437 of the Penal Code. That article is included in the same chapter as the articles on adultery, and prior to the enactment of Act No. 1773, both crimes were regarded as of a private nature and might be extinguished at any time upon condonation by the offended party. That act converted adultery and several other private crimes into public crimes, but the crime of concubinage was apparently overlooked, and in the case of *United States vs. Rivera and Vitug* (28 Phil., 13), this court held that concubinage might still be extinguished by condonation.

At the trial of the present case the defendants endeavored to prove that the offended party had condoned the crime committed by the husband, but the trial judge, being under the impression that concubinage, in common with adultery, is now a public crime, refused to receive evidence of condonation. In this his Honor erred, if we are to follow the decision in the *Rivera* case, and the case must, consequently, be remanded for further evidence. The majority of the members of the court are of that opinion.

It is therefore hereby ordered that the case be remanded to the court below for reception of evidence upon the point as to whether or not the offended party had condoned the crime of which the defendants-appellants are accused. No costs will be allowed in this instance. So ordered.

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

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