

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

G.R. No. 32663. December 15, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

Patrocinio David accuses her husband, Agapito Francisco, and one Josenna Mantelo of the crime of concubinage, the complaint being filed for the purpose of obtaining a divorce.

The complainant and the accused Agapito Francisco have been legally married since February 1, 1910. On December 30, 1922, the relations between the spouses became strained due to the fact that the wife had discovered 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 Patrocinio would allow him to pay P200 a month for the maintenance of said children, he would discontinue his relations with Josefina. Patrocinio accepted the proposition and continued to live with her husband until 1925, when they separated after entering into 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 signified 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, and this action was thereupon instituted upon the complaint of Patrocinio.

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. His coaccused was sentenced to suffer two years, four months and one day of banishment.

The crime committed is concubinage as denned 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 which might be extinguished at any time by condonation. The Act mentioned converted adultery and several other private crimes into public crimes, but the crime of concubinage seems to have been

overlooked, and in the case of *United States vs. Rivera and Vitug* (28 Phil., 13), this court held that it was still a private offense subject to pardon by the offended party.

At the trial of this case the defendants endeavored to prove that the offended party had condoned her husband for the crime committed, but the trial judge, being under the impression that concubinage was a public crime in common with adultery, refused to receive evidence of condonation. Upon appeal to this court, it was held that the court below erred in refusing the admission of evidence of condonation, and the case was consequently remanded to the court below for the acceptance of such evidence.[1]

At the new trial, the accused presented six witnesses, namely Natividad Sabinay, Iñigo Regalado, Carlos Preysler, Luis Elzingre Dumas, Juan B. Alegre, and the accused Josefina Mantelo. The testimony of these witnesses is of little value in determining whether the offended party has at any time condoned her husband. The testimony of Natividad Sabinay seems so unreliable that no weight can be given to her assertions. Iñigo Regalado testified that on one occasion in 1923 or 1924 he heard Patrocinio asking Josefina Mantelo if Agapito Francisco had slept in the house of Josefina the night before; that Josefina denied that Agapito had been there that night. It will be readily seen that this testimony has no direct bearing on the question of condonation.

The testimony of Carlos Preysler and Luis Elzingre Dumas is to the effect that in a certain club, Patrocinio had told them that she then had nothing to do with her husband and was separated from him. That does not indicate that she was disposed to pardon her spouse.

The witness Alegre related a conversation had with Patrocinio at a ball in the Tiro al Blanco in the early part of the year 1925. As far as we can see, Patrocinio said nothing which could be construed as consent to her husband's misconduct; in fact, as said conversation occurred shortly before the execution of Exhibit B, it does not indicate any acquiescence on the part of Patrocinio with the conduct of her husband. Quite the contrary.

We can find nothing in the record which can be construed as pardon or condonation. It is true that the offended party has to a considerable extent been patient with her husband's shortcomings, but that seems to have been due to his promises of improvement; nowhere does it appear that she has consented to her husband's immorality or that she has acquiesced in his relations with his concubine.

The appealed judgment is affirmed with the costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, and Johns, JJ., concur.

VILLAMOR, J.:

I reserve my vote. Judgment affirmed.

[1] 53 Phil., 965.

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