

FERNANDO MAULIT, PETITIONER AND APPELLEE, VS. DOMINGO SAMONTE, RESPONDENT AND APPELLANT.*G.R. No. 34484. December 13, 1930*

Ponente: OSTRAND, J.

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Untitled Documentbody { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

Fernando Maulit has been legally married to Maxima Agcaoili since the year 1919. In 1928 he abandoned his wife and lived with a concubine, with whom he had a child. At the instance of his legitimate wife, Maulit was prosecuted for concubinage before the Court of First Instance of Ilocos Norte and sentenced to suffer one year, eight months and twenty-one days of prision correctional, and upon appeal to the Supreme Court, the sentence was affirmed.[1]Before he began to serve the sentence, his wife executed the following document:

"AFFIDAVIT

"I, Maxima Agcaoili de Maulit, of legal age, married and at present dispensary attendant of the Hospital at Dingras, Ilocos Norte, after being duly sworn to according to law, depose and say:

"That I have been married to Mr. Fernando Maulit of Banna, Ilocos Norte, and during our marriage life we had five children.

"Said Fernando Maulit, my husband, during this conjugal life, fell in love with one Sabina Tabatiag and continued so for a time for which reason I was compelled to sue him and said Sabina Tabanag to court, under the crime called 'amancebamiento.'

"This cause has been presented in the Court of First Instance of Ilocos Norte, and said Honorable Court found my husband, Fernando Maulit, guilty of the crime and sentenced him to one year, eight months and twenty-one days, which sentence was confirmed by the Supreme Court of the Philippine Islands.

"During the period when the above-mentioned cause was being at the court, my husband, said Fernando Maulit, has repented from what he has committed against me and was converted by himself once more a good father and husband as he had been before he has committed the above crime.

"In view of this change which I found in my husband, and under these presents, without having been influenced, by any one nor having been promised anything for doing this; but all and every word that I stated in this affidavit were voluntarily made by me with my free will; I hereby give full pardon to my husband, Fernando Maulit; and respectfully requests all authorities which are concerned to extend the same pardon to said Fernando Maulit.

"In testimony hereof, I set my hand this 9th day of October, 1930, at Dingras, Ilocos Norte."

(Signed and sworn to.)

Notwithstanding the condonation or pardon granted the convict by his wife, he was nevertheless imprisoned on the theory that under the provisions of Act No. 1773, concubinage was no longer a private offense which could be extinguished by condonation. Maulit's wife thereupon filed a petition in the Court of First Instance for a writ of habeas corpus. The writ was granted, and the presiding judge, Fermin Mariano, held that concubinage was still a private offense extinguishable by condonation or pardon. His Honor consequently ordered the release both of Maulit and of the concubine, and the provincial fiscal, on behalf of the provincial governor, appealed to this court.

The controversy relates to Act No. 1773 in which the crimes of adultery, seduction, abduction, rape, calumny, and insults are classified as public crimes which can no longer be extinguished by condonation, pardon, or remission of penalty by the aggrieved person, with the exception that in cases of seduction, abduction, or rape, a legal marriage of the accused or convicted to the aggrieved person will extinguish the criminal liability. The crime of concubinage is not mentioned in the Act, but counsel for the appellant contends that the similarity between adultery and concubinage is so close that the legislators in making adultery a public crime must also have had in mind concubinage as a form of adultery.

We cannot quite agree with counsel. 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.

The judgment of the court below is affirmed without costs. So ordered.

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

[1] *People vs. Maulit and Tabanag*, G. R. No. 32682, promulgated September 2, 1930, not reported.

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