

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. CONSOLACION INFANTE ET AL., DEFENDANTS.
CONSOLACION INFANTE, APPELLANT.**

G.R. No. 36270. August 31, 1932

Ponente: MALCOLM, J.

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MALCOLM, J.:

In the Court of First Instance of Manila, Consolacion Infante and Emeterio Ramos were charged with the crime of adultery by Manuel Artigas, jr., the offended party. After first pleading not guilty on arraignment, later when the case was called for trial the accused asked permission to withdraw their plea of not guilty and substitute therefor the plea of guilty. Thereupon, the trial judge sentenced each of them to two years, four months, and one day of imprisonment, prision correccional, with the accessory penalties prescribed by law, and to pay one-half of the costs. The appeal taken by Consolacion Infante from this judgment is without merit, for obviously the appellate court cannot go into the question of whether or not the plea was made on the assurance given by her attorney that she would only be sentenced to the minimum penalty which she believed would not exceed six months. (Fiscal of Manila vs. Del Rosario [1928], 52 Phil., 20.)

In this court, after the case had been submitted, a motion to dismiss was filed on behalf of the appellant predicated on an affidavit executed by Manuel Artigas, jr., in which he pardoned his guilty spouse for her infidelity. But this attempted pardon cannot prosper for two reasons. The second paragraph of article 344 of the Revised Penal Code which is in question reads: The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders." This provision means that the pardon afforded the offenders must come before the institution of the criminal prosecution, and means, further, that both the offenders must be pardoned by the offended party. To elucidate further, article 435 of the old Penal Code provided: "The husband may at any time remit the penalty imposed upon his wife. In such case the penalty imposed upon the wife's paramour shall also be deemed to be remitted." These provisions of the old Penal Code became inoperative after the passage of Act No. 1773, section 2 which had the effect of repealing the same. The Revised Penal Code thereafter expressly repealed the old Penal Code, and in so doing did not have the effect of reviving any of its provisions which were not in force. But with the incorporation of the second paragraph of article 344, the pardon given by the offended party again constitutes a bar to the prosecution for adultery. Once more, however, it must be emphasized that this pardon must come before the institution of the criminal prosecution and must be for both offenders to be effective—circumstances which do not concur in this case.

The crime committed falls under article 333 of the Revised Penal Code. There being present a mitigating circumstance of a plea of guilty, the penalty should be imposed in the minimum degree. This happens to be the penalty which was meted out under the old Penal Code for this appellant.

Judgment affirmed, with the costs of this instance against the appellant, and the motion for dismissal-denied.

Villamor, Ostrand, Abad Santos, and Butte, JJ., concur.

[1] Ordered published by resolution of the Supreme Court of the Philippine Islands dated September 30, 1933.

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