

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. URSULA SENSANO AND MARCELO RAMOS, DEFENDANTS AND APPELLANTS.

G.R. No. 37720, March 07, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

The appellants were sentenced by the Court of First Instance of Ilocos Norte for the crime of adultery to three years, six months and twenty-one days of prision correccional and appealed to this court, assigning the following error: "The court below erred in not holding that the offended husband consented to the adultery committed by his wife Ursula Sensano in that he refused to live with her after she extinguished her previous sentence for the same offense, and by telling her then that she could go where she wanted to and do what she pleased, and by his silence for seven years notwithstanding that he was informed of said adultery."

The facts briefly stated are as follows:

Ursula Sensano and Mariano Ventura were married on April 29, 1919. They had one child. Shortly after the birth of this child, the husband left his wife to go to the Province of Cagayan where he remained for three years without writing to his wife or sending her anything for the support of herself and their son. Poor and illiterate, without relatives upon whom she could call, she struggled for an existence for herself and her son until a fatal day when she met the accused Marcelo Ramos who took her and the child to live with him. On the return of the husband (in 1924), he filed a charge against his wife and Marcelo Ramos for adultery and both were sentenced to four months and one day of arresto mayor. The court, in its decision, stated the following: "In the opinion of the court, the husband of the accused has been somewhat cruel in his treatment of his wife, having abandoned her as he did." After completing her sentence, the accused left her paramour. She thereupon appealed to the municipal president and the justice of the peace to send for her husband so that she might ask his pardon and beg him to take her back. At the house of the president she begged his pardon and promised to be a faithful wife if he would take her back. He refused to pardon her or to live with her and said she could go where she wished, that he would have nothing more to do with her, and she could do as she pleased. Abandoned for the second time, she and her child went back to her coaccused Marcelo Ramos (this was in the year 1924) and they have lived with him ever since. The husband, knowing that she resumed living with her codefendant in 1924, did nothing to interfere with their relations or to assert his rights as husband. Shortly thereafter he left for the Territory of Hawaii where he remained for seven years completely abandoning his said wife and child. On his return to these Islands, he presented the second charge of adultery here involved with the sole purpose, as he declared, of being able to obtain a divorce under the provisions of Act No. 2710.

Article 344 of the Revised Penal Code, paragraphs 1 and 2, are as follows:

"Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.—The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed

by the offended spouse.

"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."

Apart from the fact that the husband in this case was assuming a mere pose when he signed the complaint as the "offended" spouse, we have come to the conclusion that the evidence in this case and his conduct warrant the inference that he consented to the adulterous relations existing between the accused and therefore he is not authorized by law to institute this criminal proceeding.

We cannot accept the argument of the Attorney-General that the seven years of acquiescence on his part in the adultery of his wife is explained by his absence from the Philippine Islands during which period it was impossible for him to take any action against the accused. There is no merit in the argument that it was impossible for the husband to take any action against the accused during the said seven years.

The judgment below is reversed with costs de officio.

Street and Ostrand, JJ., concur.

[1]Published by authority of Court's Resolution of March 30, 1933.

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