

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ALFONSO GUINUCUD AND ROSARIO TAGAYUN, DEFENDANTS AND APPELLANTS.

G.R. No. 38672. October 27, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a decision of the Court of First Instance of Isabela, convicting the appellants of the crime of adultery. The prosecution was instituted by the complaint of the husband of Rosario Tagayun, named Ramon Palattao.

Upon arraignment, the accused pleaded not guilty but on the hearing, admitted the facts alleged in the information but presented evidence to prove that Ramon Palattao consented to the adultery, which fact, if established, bars any prosecution under article 344 of the Revised Penal Code. The pertinent paragraphs of said article are as follows:

"Art. 344. 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."

It appears from the evidence in this case that the husband, Ramon Palattao, in April 1930, abandoned and deserted his wife, Rosario Tagayun, then aged 21, and their child. After that abandonment, Rosario lived with her mother but made repeated efforts to win back her husband. She went to the justice of the peace of San Pablo, Mariano Castaneda, who testified that he called Ramon and endeavored to persuade Ramon to take his wife back, but Ramon refused. Thereafter, at the request of the mother of Rosario, the barrio lieutenant, Mariano Tumaliuan, took Rosario and her child to Ramon's house but she was refused admission by the said Ramon. Thereafter, on July 3, 1930, the husband, Ramon, induced his wife, Rosario, to sign the document which appears in the record as Exhibit 1. He brought the document in duplicate to the house of Rosario's mother where both of them signed both copies, he keeping the original and leaving her the carbon copy. Exhibit 1 is as follows:

"COUPLE'S AGREEMENT

"We, Ramon Palattao and Rosario Tagayun, man and wife, enter into the following agreement:

"That in view of the fact that, I, Ramon Palattao, the man, cannot stay and live with the parent of Rosario Tagayun in barrio Lattu; and that in view of the fact that I, Rosario Tagayun, the woman, cannot live with the parent of Ramon Palattao in barrio Auitan;

"We mutually agree by this present to separate from each other and that Ramon Palattao can and I gave him the privilege to love or marry another woman; so also Rosario Tagayun can accept or be married to another man;

"We also agree that, as to the baby Leslie who is our child, it is our right to have him by turn and we are bound to support him jointly;

"Finally we state also that each of us has to find his or her means of existence and neither of us has the right to bother the other as to his or her livelihood;

"In witness whereof we sign at barrio Lattu in the municipality of San Pablo, province of Isabela, this 3rd day of July, 1930.

(Sgd.) "ROSARIO TAGAYUN

(Sgd.) RAMON PALATTAO"

At the time said Exhibit 1 was signed, Rosario and her child were living with Rosario's mother and there is no evidence of any misconduct on her part at that time or that she contemplated any illicit relations with any other man. On the other hand, we are convinced from the conduct of the husband Ramon that he solicited the signature of Rosario to said agreement in his own interest and because he desired to have "the privilege to love or to marry another woman". At the trial of this case, he denied that the signature in Exhibit 1 was his signature. This was a palpable falsehood as a comparison with his signatures on other documents in the files plainly shows. He even had the effrontery to deny his signature to a motion for continuance which he filed in the justice of the peace court.

He admitted on cross-examination that, for more than a year before he filed the complaint in this case, he knew that his wife Rosario and her coaccused Alfonso were living together in the same house. During all that time he took no action whatever to vindicate the honor of his name or to resent the open offense to the integrity of his home, doubtless, because he felt bound by the alleged agreement to give his consent to Rosario's conduct or because he expected her to reciprocate. As this court stated in the case of *People vs. Sensano and Ramos* (p. 73, ante), he was "assuming a mere pose when he signed the complaint as the 'offended' spouse," and his conduct as shown by the evidence in this case warrants the inference that he consented to, and acquiesced in, the adulterous relations existing between the accused, and he is, therefore, not authorized by law to institute this criminal proceeding.

The agreement above referred to (Exhibit 1) is void in law. (Cf. *People vs. Tolentino*, G. R. No. 34145, promulgated October 22, 1931.)[1]

Whilst the agreement, Exhibit 1, is void in law, it is nevertheless competent evidence to explain the husband's inaction after he knew of his wife's living with the coaccused and to show that he acquiesced in her conduct. The expression "if he shall have consented" in article 344 of the Revised Penal Code, which bars the "offended" husband from instituting a prosecution, has no reference to any consent or agreement prior to the commission of the offense but relates to an express or implied acquiescence subsequent to the offense. This consent or acquiescence need not be express but may be inferred from the conduct or the long continued inaction of the husband after learning of the offense. The husband who is truly "offended", within the meaning of the statute, will not sit passively by and allow his name and the honor of his family to be flagrantly sullied by the notorious adultery of his wife. Apart from that, the fact that he abandoned and deserted his wife and child, in spite of all her efforts to maintain their home intact, shows a callous indifference to every moral duty imposed upon him as her husband and the father of their child. In this case, the very thing happened which he might have foreseen and probably did foresee when he abandoned his wife and deceived her into believing that she was free when she signed the said agreement a year and a half before the offense was committed. His consent to the offense before it was committed was void but his tolerance of and acquiescence in the offense after it was committed demonstrate that it is a hypocritical pretense for him now to appear in court as the "offended party" and bar his right to

prosecute his wife.

Very apt in this connection are the following paragraphs in Groizard's commentaries on similar provisions in the Codigo Penal of Spain:

"A su vez, transigir un marido con su deshonor, consentir el adulterio y luego ir a los tribunales querellandose de la mujer y de su complice, es ser dos veces indigno: la primera, al conocer y no vindicar la ofensa recibida, y la segunda, haciendola publica, con daño de toda la familia, despues de haber demostrado que personalmente le afectaba en poco." (Page 48, Groizard's Codigo Penal, Vol. 5.)

"A las limitaciones de que acabamos de hablar, nosotros añadiríamos otra que encontramos establecida en algunos codigos que en las concordancias figuran. Fijariamos un plazo, mas o menos largo, para la presentacion de la querella, pasado el cual, negariamos al marido el derecho de producirla. El marido que tiene conocimiento de la violacion de la fe conyugal, y deja pasar cuatro o seis meses sin acudir a los tribunales demandando reparacion de las injurias, debe suponerse que tacitamente las ha perdonado. Espacio ha tenido suficiente, cuando la herida chorreaba sangre, para ejercer el derecho que la ley le daba; si no lo hizo en un termino prudencial, no es justo que indefinidamente tenga a la mujer bajo la amenaza de un castigo vergonzoso que cohiba perpetuamente su espiritu, impidiendo su arrepentimiento y dificultando la conciliacion conyugal, y con ella la paz de la familia." (Page 49, Groizard's Codigo Penal, Vol. 5.)

The judgment below is reversed with costs de oficio.

Street, Malcolm, Abad Santos, and Vickers, JJ., concur.

[1] In this case the court ordered: "That the decision of First Division signed by Justices Street, Malcolm, Abad Santos, Vickers, and Butte, be promulgated in lieu of the one signed by Justices Abad Santos, Vickers, and Butte and promulgated on October 19, 1933, which has been recalled." [1] 56 Phil., 802.

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