

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO CORNEJO AND ESMERALDA DE GUZMAN, DEFENDANTS AND APPELLANTS.

G. R. No. 40393. October 25, 1934

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The offended party Emilia M. Favor is the legitimate wife of the appellant Francisco Cornejo and the other appellant Esmeralda de Guzman had knowledge of this fact. In January, 1931, the offended party filed a complaint for concubinage against the appellants but said case was dismissed on April 8, 1932, due to the non-appearance of the offended party. Subsequently, on March 8, 1933, another complaint for the same offense was filed against said appellants and, after due trial, they were found guilty and sentenced, Francisco Cornejo to two years of prison correccional, and Esmeralda de Guzman to three years of destierro.

The offended party admits that in April, 1932, she returned with her children to Tayug in order to live with her husband in the conjugal dwelling. This was equivalent to a pardon of her husband, particularly if it is borne in mind that she failed to appear on the day set for the trial of the former case. In explanation of her non-appearance, there is evidence to the effect that it was due to the fact that she had consented to pardon her husband.

Although under the former law a pardon by the offended party did not extinguish the criminal action, it now extinguishes said action according to the Revised Penal Code in force and this provision, being favorable to the accused, is applicable to facts that took place before it became effective.

An attempt was made by the prosecution to prove that subsequent to April, 1932, the appellants again lived as husband and wife in a house built on a lot belonging to the conjugal partnership. However, this court finds that the evidence is insufficient to establish this fact. It has been proven, and the offended party admits it, that since 1931, this lot on which the house in which it is claimed that the appellants lived as husband and wife, is situated, was sold by the appellant to Apolinaria Bautista in June, 1931, and thereafter leased to Francisco Lucero. The principal witness for the prosecution to prove that the appellants lived in this house as husband and wife was Jacinto Villaruz. This witness testified that in 1932 he lived with his family as tenant in said house and the appellants lived with them as husband and wife for a month. How Villaruz could live as the appellant's tenant on this lot after it had been sold to Bautista and after Bautista had leased it to Lucero, is beyond comprehension. Lucero testified that from the time he occupied the lot, Villaruz never lived thereon.

Granting that the offended party pardoned the appellant, and it not having been sufficiently proven that the appellants continued to live as husband and wife after the pardon, the appealed judgment is reversed and the appellants are acquitted of the charges, with costs de oficio. So ordered.

Abad Santos, Hull, Vickers, and Diaz, JJ., concur.

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