

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. RODOLFO A. SCHNECKENBURGER AND JULIA MEDEL, DEFENDANTS AND APPELLEES.*G.R. No. 45474. June 13, 1938*

Ponente: IMPERIAL, J.

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A complaint was filed in the Court of First Instance of Manila against the defendants charging them with having committed the offense of concubinage. It was alleged therein that from the month of May, 1936, until the date of the complaint, in the City of Manila, the defendant Schneckenburger, being the legitimate husband of the complainant, voluntarily, illegally and with public scandal cohabited and had carnal intercourse with his codefendant, a woman who is not his wife, and that the latter, with public scandal, cohabited and had carnal intercourse with her codefendant with knowledge that the latter was married to the complainant. The defendants were informed of the complaint to which" they pleaded "not guilty." Later, but before the trial, they filed a motion for the dismissal of the case on the ground that they had been and were being accused in the Court of First Instance of Rizal of the offense of bigamy. After hearing the motion, the Court denied it by order of November 2, 1936. On January 20, 1937 the defendants filed another motion for the dismissal of the case which was then accompanied by a copy of the information for bigamy in which it appears that the latter offense was committed by the defendants on May 11, 1936. The fiscal objected to the motion but, after hearing counsel for the parties, the court, presided over by another judge, sustained the motion and dismissed the case with costs de oficio and with cancellation of the defendants' bond. The fiscal appealed.

In his brief the Solicitor-General contends that the appealed order is erroneous because it holds that the man and the woman who are married, although they are bigamists as their marriage is illegal, do not commit the offense of concubinage, and because said order dismissed the case, with costs de oficio.

The motion for dismissal was not a demurrer to the sufficiency of the information because it was filed after the defendants had pleaded. Neither was it a demurrer to the sufficiency of the evidence for the prosecution, for the reason that, when it was filed, the trial had not yet been held. it was in reality an anticipation of the evidence of the defendants' defense before the evidence for the prosecution was adduced. This procedure is not sanctioned by the procedural law, General Orders, No. 53 and its amendments. For this sole reason, and without resolving the question whether those guilty of bigamy cannot be convicted of concubinage, or whether bigamy is an obstacle to the prosecution for the offense of concubinage, we hold that the dismissal of the case was premature and the court should have proceeded with the trial and thereafter determined the questions decided by it in advance.

The appealed order is set aside, with instruction that corresponding trial be held by the court and definitive judgment rendered in accordance with law, with costs of this instance de oficio. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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