

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TORCUATA GOMEZ AND RAMON NARCISO CORONEL, DEFENDANTS AND APPELLANTS.

G.R. No 4630. December 19, 1908

Ponente: TORRES, J.

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TORRES, J.:

The complaint upon which these proceedings were brought is as follows:

"The undersigned fiscal charges Torcuata Gomez and Ramon Narciso Coronel with the crime of adultery committed as follows:

"That on or about the beginning of the year 1906, until the 30th of September, 1907, in the municipality of Oroquieta, Province of Misamis, P. I., the said Torcuata Gomez, maliciously, and feloniously, and being then lawfully married to Fabiano Martinez Lao, without the said marriage having been in any manner dissolved, attempted to lie and did lie with Ramon Narciso Coronel; knowing that the said Torcuata Gomez is a married woman whose marriage is not dissolved, he lay with her, and afterwards lived in marital relations with her in the same house in the said municipality of Oroquieta, with public scandal, all contrary to law.—Jimenez, Province of Misamis, this the 18th day of January, 1908.— (Signed) Jose de la Rama, provincial fiscal of Surigao, Misamis, and Agusan."

The case was proceeded with through all its stages against both the accused; the husband as the aggrieved party did not file any charge, although he testified as a witness in the case. On the 25th of January, 1908, the trial judge, considering that the crime of adultery had been proven and that the guilt of the accused Torcuata Gomez and Ramon Narciso Coronel had been established, sentenced each one of them to the penalty of three years, six months, and twenty-one days of prison correccional, to the accessory penalties, and costs. From said judgment the accused have appealed.

In this case it has been fully proven that Ramon Narciso Coronel, by reason of his living in the house of Torcuata Gomez, a woman lawfully married to Fabiano Martinez, contracted with her illicit and hence adulterous relations which lasted for a period of seventeen months, from April, 1906, to September, 1907. There being, no necessity of considering the allegations of the defense, this decision will be limited to deciding whether, in view of the fact that no complaint was brought by the aggrieved husband, Fabiano Martinez Lao, it would be lawful to sustain the proceedings and the condemnatory judgment appealed from, merely by virtue of the complaint presented by the provincial fiscal of Misamis.

Proceedings instituted for crimes defined and punished by the Penal Code in force are regulated by the law of criminal procedure, that is, General Orders No. 58, and that law recognizes as an exception the right of the offended party in crimes of a private nature, in respect to which the provisions of the Penal Code were still in force; in the application of said provisions, as regards the prosecution, those of the former law of procedure have continued to be observed, since they are in perfect harmony with the code now in force, and the public prosecutor

is under no obligation to prosecute, among other crimes of a private nature, that of adultery, which is defined in article 433 of the Penal Code, since the offended husband alone is entitled to bring such action before the courts. Article 434 of the said code reads:

"No penalty shall be imposed for the crime of adultery except upon the complaint of the aggrieved husband.

"The latter can enter a complaint against both guilty parties, if alive, and never, if he has consented to the adultery or pardoned either of the culprits."

So that, under the provisions of the foregoing article, no complaint or charge having been presented by the husband, Fabiano Martinez, against the parties accused of said crime, no valid judgment could be entered nor could any proceedings be brought, against them, in view of the fact that proceedings are instituted in order to prosecute for a crime and to punish the guilty; the absence of a complaint or charge by the aggrieved husband can not be substituted by the complaint filed by the provincial fiscal of Misamis as such a substitution is not authorized by law.

Such has always been the constant and genuine interpretation of the provision of the criminal law in relation to this crime, according to the doctrine laid down by the supreme court of Spain when applying a similar article of the Penal Code of that country, as appears in its decisions of January 17, 1874, and January 16, 1875.

The crime in question was committed prior to the enforcement of Act No. 1773 of the Philippine Commission, which went into effect on the 11th of October, 1907. Although the complaint was filed by the fiscal on the 18th of January, 1908, it is not lawful to attribute retroactive effects to the said Act of the Philippine Commission for the reason that, even though it refers to a matter of procedure, it does not contain any clause making it retroactive in its effects, and furthermore, the provisions thereof if applied now are prejudicial to the accused.

Hence, in view of the terms of the aforesaid article 433 of the Penal Code, the proceedings instituted by virtue of the complaint filed by the fiscal can not be sustained, as they were brought without the necessary previous complaint of the aggrieved husband, and in violation of the criminal law; therefore, the said proceedings, together with the judgment rendered therein, are decidedly null and void.

On these grounds all the proceedings in this case, together with the judgment appealed from, are hereby held to be null and void; the bond executed by the accused is set aside with costs de oficio. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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