

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONINA LAMPANO AND RAYMUNDO ZAPANTA, DEFENDANTS AND APPELLANTS.

G.R. No. 4705. March 31, 1909

Ponente: CARSON, J.

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CARSON, J.:

The complaint in this case, which is dated February 1908, charges accused with the crime of adultery, committed as follows:

"That the said Antonina Lampano, although united in lawful and canonical marriage with the complaining witness from the 17th of June of the year 1886, which marriage was not dissolved or annulled up to this date, lived together with the other accused Raymundo Zapanta as his wife in the pueblo of Angeles, of this province, from the 1st of July, 1906, up to this date, from which illicit relations and sexual intercourse they have a daughter who was baptized as a legitimate child in the parish of the same pueblo on November 27, 1907; all contrary to law."

The trial court found the accused guilty of the crime with which they were charged, and sentenced each of them to three years six months and twenty-one days' imprisonment in Bilibid Prison, with hard labor, and to pay one-half of the costs.

The evidence of record conclusively establishes that throughout the period indicated in the complaint, the accused, Raymundo Zapanta, had illicit relations with his codefendant, Antonina Lampano, and that the latter is, and during that period was, the lawful wife of the complainant, Pascual Acuña.

These facts are substantially admitted upon appeal, but counsel for appellants vigorously contend that there is not sufficient evidence in the record to sustain a finding that the accused Zapanta knew that his codefendant, Antonina Lampano, was married at the time when he had these relations with her, and that, in the absence of proof of that fact, the judgment of conviction must be reversed, such knowledge, under the provisions of article 434 of the Penal Code which defines and penalizes the crime of adultery, being an essential element of the crime. We think, however, that Zapanta's knowledge of the fact that his codefendant was married to Acuña was proven beyond a reasonable doubt. As far back as the year 1899, Zapanta was on friendly terms with Acuña, visited at Acuña's house, where Acuña lived together with his wife, and at that time she was introduced to Zapanta as Acuña's wife. From that time until the time when he was arrested in 1908, the two accused have been on intimate terms, and during a considerable portion of that period have lived together, Zapanta having taken the woman away from her husband's home in 1900, and again in 1903, and yet again in 1906. The woman had three children by her husband, who bore his name, and were known to Zapanta as the children of Acuña. These children lived at times with their father, and at times with their mother and her paramour, by whom on such occasions they were supported; and, if the testimony of the accused themselves can be believed, the two accused, on various occasions contributed, from their joint earnings, money which was delivered to the father partly for his own support and partly for the support

of his children. Throughout the long period during which these illicit relations existed, Zapanta and Acuña were well known to each other, and keeping in mind the circumstances under which the accused first became known to each other, the repeated conciliations between husband and wife followed by her repeated desertion of her home with Zapanta, the existence of the children, and the attitude of both accused toward them, Zapanta's bare denial of all knowledge of the fact that his codefendant was married to the complainant is in our opinion wholly incredible and unworthy of belief.

Counsel for appellants insist that the complaint is insufficient and fatally defective, in that it fails to allege that the accused, Raymundo Zapanta, was aware of the fact that his coaccused was a married woman at the time when he had illicit relations with her, and further because, as counsel alleges, it charges two offenses, the private crime of adultery, defined and penalized in the Penal Code, committed prior to October 11, 1907, the date of the passage of Act No. 1773 of the Philippine Commission, and the public crime of adultery, as defined in that Act, committed since that date.

It is sufficient answer to these contentions to point out that no objection was raised upon these grounds in the court below. In the language of the syllabus in the case of *Mortiga vs. Serra et al.* (5 Phil. Rep., 34, following *U. S. vs. Sarabia*, 4 Phil. Rep., 566), "Objections to the complaint, based upon an insufficient statement of the facts constituting the offense, will not be considered by this court when they were not presented to the court below;" and in the language of the syllabus of the decision of the Supreme Court of the United States, in that case on appeal, "while a complaint on a charge of adultery under the Penal Code of the Philippine Islands may be fatally defective for lack of essential averments as to place and knowledge on the part of the man that the woman was married, objections of that nature must be taken at the trial, and, if not taken, and the omitted averments are supplied by competent proof, it is not error for the Supreme Court of the Philippine Islands to refuse to sustain such objections on appeal." (204 U. S., 470; also reported in 11 Phil. Rep., 762.)

And while it is true that, under the provisions of section 11 of General Orders, No. 58, a complaint or information should charge but one offense, and that, if the attention of the trial court is directed to the fact that a complaint or information charges more than one offense, it is the duty of the court to direct the prosecution to elect to stand on one of the charges or to file two or more separate complaints or informations charging each crime separately; nevertheless, if by mistake or oversight a complaint does charge two or more separate offenses, and the accused without opposition goes to trial thereon, and the evidence submitted is sufficient to convict him of one of them, he can not be heard to complain on appeal of the fact that there were other offenses charged in the complaint of which he was not convicted. The rule was made more especially for the benefit of the accused in criminal cases, to protect them from being overwhelmed with charges which they might be unable to meet and refute in a single trial; but, if the accused waives the protection of the rule, and undertakes to defend himself against several different offenses charged in the same complaint, he must abide the consequences. Acquittal on the complaint would, forever relieve him of liability to prosecution for any of the offenses charged therein, and no reason can be suggested why he should not be convicted of any one of these offenses, when his guilt is established by the evidence beyond a reasonable doubt.

But it may not be improper to add that defendants by their counsel undertook to controvert the evidence of the prosecution tending to prove that Zapanta knew that his coaccused was a married woman at the time when he had illicit relations with her, and their contentions having been duly considered by the court, they were in nowise prejudiced by the omission of a specific allegation in that regard from the complaint; and, admitting that the provisions of Act No. 1773' changed the essential nature as well as the mode of prosecution of the crime of adultery, the accused were in no real sense prejudiced by the fact that the complaint charges the commission of the crime of adultery prior to the passage of the Act as well as after its passage, for the prosecution having offered

evidence to establish the commission of the crime before as well as after the passage of the Act, the accused had full opportunity to offer evidence in their defense as to both periods, of which they did in fact take advantage.

Counsel also contend that, since criminal prosecutions for adultery can only be instituted on the complaint of the aggrieved party, who is forever barred from filing such complaint, under the provisions of article 434 of the Penal Code, when he or she has consented to the commission of the adulterous acts, the trial court should have dismissed the complaint in this case without rendering judgment of conviction, because, as counsel allege, the evidence of record discloses that the husband and complainant consented to the adulterous relations of his wife with her codefendant.

We are of opinion, however, that the provisions of the Penal Code whereby the consent of the husband to the adulterous relations of his wife forever barred him from filing a complaint, and thus forever relieved the culprits from liability, which was a logical and necessary consequence of the treatment of the crime of adultery strictly as a private crime, must be deemed to have been repealed by necessary implication by the provisions of Act No. 1773, enacted October 11, 1907, which treats the crime, not as a private crime, but as a public crime.

Under the provisions of the Penal Code, which treated adultery strictly as a private crime, the law took cognizance only of the injury to the offended person, and when that person, either by consenting to the commission of the adulterous act or by granting a pardon therefor, once waived or surrendered his right to have the offense vindicated by the strong arm of the law, he was forever thereafter barred from filing a complaint, and if a pardon was granted after the penalty had been imposed, that penalty was remitted. The new law, on the other hand, which treats adultery as a public crime, concerns itself chiefly with the offense to public morals involved in the commission of the adulterous acts, and expressly provides for the prosecution of the offenders "in the same manner" as persons charged with other public crimes are prosecuted, with the single proviso that the proceedings can only be instituted by the offended party, that is to say, by the husband or wife, as the case may be.

The penalty prescribed for the crime of adultery is that of prision correccional in its medium and maximum degrees, and the sentence of the trial court, modified by the substitution of three years six months and twenty-one days of prision correccional with the right to an abono of one-half the period they may have been held in detention pending trial, in accordance with the provisions of article 93 of Ley Provisional for the application of the Penal Code in the Philippine Islands, in lieu of the term of imprisonment with hard labor therein imposed, and by the addition of the subsidiary penalties prescribed in article 61 of the Penal Code, is hereby affirmed, with a proportionate share of the costs of this instance against each of the appellants.

Arellano, C. J., Torres, Mapa, Johnson, and Willard, JJ., concur.

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