

LUIS OCAMPO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 47756. June 10, 1941*

Ponente: MORAN, J.

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Charged with one Igmedia Refe of the crime of concubinage in the Court of First Instance of Albay, petitioner Luis Ocampo was found guilty and sentenced to an indeterminate penalty of from six (6) months of arresto mayor to two (2) years, eleven (11) months and ten (10) days of prison correctional, and to the accessories of the law. This judgment was affirmed by the Court of Appeals.

The illicit relations between petitioner Luis Ocampo and his coaccused Igmedia Refe began in 1937. In September of that year, petitioner with Igmedia went to Naga where they dwelt together as husband and wife in the same house and were often seen together attending shows and dances. In October of the same year, they went for a thermal bath in Tiwi, Albay, where, in the first visit, they stayed for three days, and in the second, for four days. During their entire stay, they dwelt together as husband and wife in the house of one Alfonsa Toledo, occupying one room where they slept alone.

The legal question raised in this appeal is whether, on the basis of the foregoing facts, petitioner may properly be held guilty of concubinage.

Under the provisions of article 334 of the Revised Penal Code, concubinage may be committed in either of the following ways: (1) by keeping a mistress in the conjugal dwelling; (2) by having sexual intercourse, under scandalous circumstances, with a woman who is not his wife; and (3) by cohabiting with such woman in any other place.

We are here concerned only with the third way of committing the offense under which petitioner was convicted. The term "cohabit" means to dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse. (*People vs. Pitoc*, 43 Phil., 758.) And, whether an association, for illicit intercourse, has been such as to constitute an unlawful assumption of the conjugal relation, is, in every case a question of fact (74 A. L. R., 1363), and the extent of such association as to constitute a cohabitation within the meaning of the law, is a matter of court's appreciation.

In the instant case, petitioner's conduct with his co accused was not confined to isolated interviews for unlawful intercourse. He and his coaccused dwelt together as husband and wife in the same house in Naga, Camarines Sur, where they were seen attending shows and dances; again, in Tiwi, Albay, they dwelt together as husband and wife in the same house for seven days and nights where they slept together and alone in one room. We are of the opinion and so hold that such association is sufficient to constitute a cohabitation within the meaning of the law even disregarding proofs of actual sexual intercourse.

Petitioner maintains that the letter (Exhibit 2) sent to him by complainant in the latter part of June, 1937,

constitutes consent to his illicit' relations and is, therefore, a condonation within the provisions of the second paragraph of article 344 of the Revised Penal Code. The letter was construed by the trial court under the facts and circumstances of the case as not constituting consent or condonation, and this finding has not been reversed by the Court of Appeals. At this stage of the proceeding we cannot review the finding which involves questions of fact.

Judgment is affirmed, with costs against petitioner.

Avancena, C. J., Diaz, Laurel, and Horrilleno, JJ., concur.

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