

THE PEOPLE OP THE PHILIPPINES, PLAINTIFF-APPELLEE VS. RODOLFO A. SCHNECKENBURGER ET AL., DEFENDANTS-APPELLANTS.

G.R. No. 48183. November 10, 1941

Ponente: MORAN, J.

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MORAN, J.:

On March 16, 1926, the accused Rodolfo A. Schneckenburger married the complainant Elena Ramirez Cartagena and after seven years of marital life, they agreed, for reason of alleged incompatibility of character, to live separately from each other. And on May 25, 1935 they executed a document which in part recites as follows:

"Que ambos comparecientes convienen en vivir separados el uno del otro por el resto de su vida y se comprometen, y obligan reciprocamente a no molestar ni intervenir ni mezclarse bajo ningun concepto en la vida publica o privada de los mismos, entre si; quedando cada uno de los otorgantes en completa libertad de accion en cualquier acto y en todos conceptos."

On June 15, 1935, the accused Schneckenburger, without leaving the Philippines, secured a decree of divorce from the civil court of Juarez, Bravos District, State of Chihuahua, Mexico. On May 11, 1936, he contracted another marriage with his co-accused, Julia Medel, in the justice of the peace court of Malabon, Rizal, and since then they lived together as husband and wife in the City of Manila. Because of the nullity of the divorce decreed by the Mexico Court, complainant herein instituted two actions against the accused, one for bigamy in the Court of First Instance of Rizal and the other for concubinage in the Court of First Instance of Manila. The first culminated in the conviction of the accused for which he was sentenced to a penalty of two months and one day of *arresto mayor*. On the trial for the offense of concubinage, accused interposed the plea of double jeopardy, and the case was dismissed; but, upon appeal by the fiscal, this Court held the dismissal before trial to be premature (this was under the former procedure) and without deciding the question of double jeopardy, remanded the case to the trial court for trial on the merits. Accused was convicted of concubinage through reckless imprudence and sentenced to a penalty of two months and one day of *arresto mayor*. Hence this appeal.

As to appellant's plea of double jeopardy, it need only be observed that the offense of bigamy for which he was convicted and that of concubinage for which he stood trial in the court below are two distinct offenses in law and in fact as well as in the mode of their prosecution. The celebration of the second marriage, with the first still existing, characterizes the crime of bigamy; on the other hand, in the present case, mere cohabitation by the husband with a woman who is not his wife characterizes the crime of concubinage. The first is an offense against civil status which may be prosecuted at the instance of the state; the second, an offense against chastity and may be prosecuted only at the instance of the offended party. And no rule is more settled in law than that, on the matter of double jeopardy, the test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. (*Diaz v. U. S.*, 223 U. S., 422; *People v. Cabrera*, 43 Phil., 82)

Upon the other hand, we believe and so hold that the accused should be acquitted of the crime of concubinage.

The document executed by and between the accused and the complainant in which they agreed to be "en completa libertad de acci3n en cualquier acto y en todos conceptos," while illegal for the purpose for which it was executed, constitutes nevertheless a valid consent to the act of concubinage within the meaning of section 344 of the Revised Penal Code. There can be no doubt that by such agreement, each party clearly intended to forego the illicit acts of the other.

We said before (*People vs. Guinucod*, 58 Phil., 621) that the consent which bars the offended party from instituting a criminal prosecution in cases of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness is that which has been given expressly or impliedly after the crime has been committed. We are now convinced that this is a narrow view in no way warranted by the language, as well as the manifest policy, of the law. The second paragraph of article 344 of the Revised Penal Code provides:

"The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders." (*Italics ours.*)

As the term "pardon" unquestionably refers to the offense after its commission, "consent" must have been intended, agreeably with its ordinary usage, to refer to the offense prior to its commission. No logical difference can indeed be perceived between prior and subsequent consent, for in both instances as the offended party has chosen to compromise with his/her dishonor, he/she becomes unworthy to come to court and invoke its aid in the vindication of the wrong. For instance, a husband who delivers his wife to another man for adultery, is as unworthy, if not more, as where, upon acquiring knowledge of the adultery after its commission, he says or does nothing. We, therefore, hold that prior consent is as effective as subsequent consent to bar the offended party from prosecuting the offense.

In arriving at this conclusion we do not wish to be misconstrued as legalizing an agreement to do an illicit act, in violation of law. Our view must be taken only to mean that an agreement of the tenor entered into between the parties herein, operates, within the plain language and manifest policy of the law, to bar the offended party from prosecuting the offense. If there is anything morally condemnatory in a situation of this character, the remedy lies not with us but with the legislative department of the government. What the law is, not what it should be, defines the limits of our authority.

Judgment is reversed and the accused is hereby acquitted, without costs.

Avancena, C.J., Abad Santos, Diaz, and Horrilleno, JJ., concur.

Laurel and Ozaeta, JJ., took no part.

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