

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EUSTASIO HERNANDEZ ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5256. December 21, 1909*

Ponente: MORELAND, J.

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The defendants were charged with the crime of adultery in the Court of First Instance of the Province of Ambos Camarines. They were tried upon that charge in that court and convicted and sentenced-the defendant Eustasio Hernandez to four years and nine months of prision correccional, and the defendant Catalina Mago to three years six months and twenty-one days of prision correccional, with the accessories mentioned in article 61 of the Penal Code, and each to pay one-half the costs of the action. From that judgment of conviction and the sentence imposed there-under the defendants appealed to this court.

The defendant Eustasio Hernandez admits having had illicit relations with the defendant Catalina Mago, but presents as a defense against the criminality of such act the consent of the complainant, Mariano del Pilar, husband of said Catalina Mago.

The evidence in relation to the alleged consent is conflicting and upon such conflicting evidence the court below found that the evidence adduced by the defendants was insufficient to sustain the allegation of consent. This court has carefully read the evidence in the record and can find no reason for disturbing the conclusions reached by the court below. The evidence fully supports them.

Although it is not necessary to the decision of this case, still the court feels that it ought to say for future guidance that even if the consent of the spouse to the adulterous acts complained of had been obtained by the defendants, as they allege it was, such consent would not have been a defense in this action. The substantive criminal law relating to adultery was changed materially by Act No. 1773 of the Philippine Commission. That Act made adultery a public crime, to be prosecuted, with the exceptions therein named, in the same manner as other public crimes. It destroyed entirely the right of condonation, pardon, and remission of penalty, except in specified instances. Necessarily included in that result was the complete abrogation of the defense that the injured spouse had consented to the commission of the adulterous acts which composed the crime. That such abrogation was necessarily involved in the change of the substantive law made by said Act, is evident at a glance. Under prior law, condonation, pardon, and remission were the same in their legal nature and effect as the consent of the spouse to the commission of the adulterous acts. They all resulted in absolution from criminal responsibility. The vital and essential distinction between public and private crimes, as they were known under the former law, was the control which in private crimes the injured person had over the criminal liability and responsibility of the offending person. Therefore, the real intent and purpose of the Legislature, in changing all private crimes into public crimes, was to abolish this distinction and thereby to take from every person injured by the criminal acts of another all control over the criminal liability and responsibility of the offending person-in other words, to prevent any person from remitting the criminal responsibility of another, regardless of whether that remission occurred before or after the commission of the act which constituted the crime. The fact that, in some cases, the institution

of the criminal proceedings under said Act rests wholly with the offended person, in nowise affects the intention and purpose of the Legislature as to the substantive law with which the Act deals.

Moreover, except in the presence of clear and express provision of statute to the contrary, it can not be permitted that any person produce any legal effect or work any legal result whatever in the criminal law against the paramount interests of the public by consenting to the commission of a crime by other persons.

The judgment of the court below is, therefore, affirmed, with costs against the appellants.

So ordered.

Torres, Mapa, Johnson, and Elliott, JJ., concur.

[1] The case of U.S. vs. Mariano del Pilar, complainant in this action, upon the same statement of facts, was decided the same date. Defendant convicted.

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