

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARTINA BACAS, DEFENDANT AND APPELLANT.

G.R. No. 5297. October 19, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Martina Bacas was lawfully married to Antonio Concepcion some time prior to November, 1908; said woman had been an inmate of a house of prostitution, as Concepcion, her own husband, has testified, and continued to work in said house after her marriage, not living her former life, however, but working as a laundress. On the 1st day of said month of November, 1908, she went to the house of certain spouses named Vicente and Anas accompanied by an American whose name is not known, and at 9 o'clock in the morning the accused and the American were discovered by the husband, Concepcion, who had been summoned and informed by Juan Magracia of what was going on, in the room of the said spouses, sitting on their bed which was covered with a mosquito bar, where they had been for some two hours. Juan Magracia and his wife lived in the same house and occupied the same room as the spouses Vicente and Anas, and he states that between 7 and 9 on that day the accused and the unknown American were in said bed, and that the witness and his wife and Vicente and wife were in the same room and did not leave it until Concepcion was informed; none of the said five witnesses saw any sexual intercourse between those who were on the bed.

The justice of the peace of Iligan, district of Lanao, states that when the accused was arraigned at the preliminary proceedings held in his court she pleaded guilty.

The complaint in this case reads as follows:

"That on the 1st day of November, 1908, in the municipality of Iligan, district of Lanao, Moro Province, P. I., at the house of a certain Anas in said municipality, the accused Martina Bacas, a married woman, did lie with an American whose name is not known, which fact constitutes the crime defined and punished by article 433 of the Penal Code for the Philippines, committed within the jurisdiction of this court."

And the Court of First Instance of said district upon finding that the crime was proven, sentenced the accused to the penalty of three years six months and twenty-one days of prison correccional and accessories, and to pay the costs of the proceedings. From said judgment the accused has appealed.

Paragraph 2 of article 434 of the Penal Code provides that the injured husband can not enter a complaint for adultery except against both guilty parties, and in the present case the complaint has only been entered against the adulteress, but not against the other guilty party.

Although Act No. 1773 of the Commission authorizes the prosecuting attorney to file charges for this crime, yet, the conditions established in chapter 1, title 9, book 2 of the Penal Code which deals with the crime of adultery have not been altered thereby, because the real and main object thereof was no other than that the prosecuting attorney shall appear in such cases.

Therefore, in the absence of a complaint in accordance with the provisions of the law, the case herein is dismissed, and the judgment appealed from is hereby reversed, with the costs de oficio.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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