

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GENOVEVA DESTRITO AND GERARDO DE OCAMPO, DEFENDANTS AND APPELLANTS.

G.R. No. 6984. August 19, 1912

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila, condemning Genoveva Destrito to three years six months and twenty-one days of prision correccional, and Gerardo de Ocampo to four years nine months and ten days of prision correccional, and the latter to indemnify the offended party, Arcadio de la Ysla, in the sum of P500, with the corresponding subsidiary imprisonment in case of insolvency, for the crime of adultery. Each was also sentenced to the accessory penalties provided by law, and to the payment of one-half of the costs of the cause. Both appealed and make the following assignment of errors.

"1. The court erred in finding the accused guilty under the complaint presented in this case, because of not having acquired jurisdiction.

"2. The court erred in declaring the accused guilty because the proofs do not show that the alleged crime was committed within the jurisdiction of the court.

"3. The judge erred in declaring the accused guilty because the proofs do not show their guilt beyond a reasonable doubt.

"4. The court erred in finding the concurrence of the aggravating circumstance that the crime had been committed in the house of the offended party."

The first and second assignments of error relate to the jurisdiction of the court, and can be considered together. The complaint in this case, presented on the 24th of February, 1911, and which was signed and sworn to by the offended party, did not contain any allegation that the crime was committed within the city of Manila. The case was called for hearing on March 1 of that year. By agreement, the hearing was transferred until the 9th. The prosecuting attorney, immediately after it was agreed that the case should be transferred, filed a motion asking permission to amend the complaint by inserting the words "in the city of Manila, Philippine Islands." The two accused and their attorney were present when this motion was made and offered no objection. The correction was granted by the court, and the complaint so amended. On March 9th the defendants pleaded not guilty and the case went to trial. No objection was made to the sufficiency of the complaint by demurrer or otherwise in the court below. In the syllabus to *Serra vs. Mortiga*, 204 U. S., 470 (reported in 11 Phil. Rep., 762), it is said:

"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."

In the case of *United States vs. Estrana* (16 Phil. Rep., 520), this court said:

"No objections to the sufficiency of the complaint were made in the court below, and it is now well settled that it is not error for this court to refuse to sustain such objections taken for the first time on appeal when the fatal defects in the complaint are supplied by competent proof."

So it is clear that the question raised in this court for the first time with reference to the sufficiency of the complaint is not well founded. But it is said that the proofs do not show that the crime was committed within the jurisdiction of the lower court. If the appellants had illicit relations, the acts were committed in the house of the offended husband, Arcadio de la Ysla. The latter testified that he lived at No. 300 Calle Herran, city of Manila, Philippine Islands. He did not see the actual crime committed, but says that he did see the appellants hugging and kissing in his house on Calle Herran. The witness Vicente Binapasoc testified that he saw the appellants cohabiting in a room in the house of the injured husband at No. 300 Calle Herran. He did not state that this house was situated in Manila, but he did state, as we have said, that the acts were committed in the house of the offended party. Other witnesses testified to the same effect as Binapasoc. The testimony of all these witnesses read and considered as a whole, as it should be, shows as clearly that the acts complained of were committed within the city of Manila as if it had been specifically stated by each that the house of the offended party was located in the city of Manila, Philippine Islands.

The third assignment of error raises a question of fact. All admit, that Arcadio de la Ysla and the appellant Genoveva Destrito are husband and wife and that for some eight or nine months prior to February 3, 1911, the other appellant Gerardo de Ocampo, lived with this married couple in their house, and that both the appellants left this house on that date and have not returned. According to the testimony of Ysla, he saw his wife and Ocampo on the second of February riding in a carromata, Ocampo with his arm around Genoveva's waist, and Genoveva with her head lying on Ocampo's shoulder, and that on the following day on entering his house he saw Ocampo and his wife hugging and kissing in a corner of the room; that he then immediately ordered Ocampo to leave the house and told his wife to follow him; and that they both left.

The wife testified that when her husband entered the house on that day, the 3d of February, he immediately demanded of her forty pesos which he claimed she had received from certain parties, and that as she could not produce the money, not having received it, he began to abuse and insult her, and drove her from her home. Ocampo testified that on that date he requested the offended party to render an account of a certain business in which they were both interested, as Ysla was the treasurer of the company, and that on making this demand Ysla became very angry and ordered him to leave. Ysla, sometime prior to the time this trouble arose, attempted to organize a small company for the purchase and sale of the products of the country. It appears that Ocampo prepared the by-laws and constitution of this company, and on account of being somewhat versed in these matters, he received an invitation from Ysla and his wife to make his home with them and become director-general of the company. But he at no time placed any money in the concern, nor rendered it any services of value. In fact, practically all the assets of the company existed on paper. The company was a failure and there was no reason for demanding an accounting of Ysla because there was nothing to account for. Ysla did have and was running a small tienda near his house. So it is quite strange that Ocampo should have demanded an accounting of Ysla at any time, and especially at the time he and his wife had quarrelled and she as a result had left the house. As a matter of fact, there is nothing to support the contention of the latter that her husband brought on the quarrel on account of the forty pesos. The offended husband had his suspicions aroused on the 2d when he saw the two appellants riding in a carromata and had decided to watch their conduct. Both the appellants admit that they were riding in a carromata, but deny that they were in that compromising position. Aside from the testimony of the offended husband, there appears in the record the testimony of at least three witnesses, all of whom testified that they saw the two appellants in the act of cohabitation prior to February 3, 1911, and that these illicit relations took

place in the house of the offended party, No. 300 Calle Herran. There is nothing in the record which shows or even tends to show that these three witnesses were not telling the truth. They lived in the immediate vicinity, and in fact one of them was living in the house of the offended husband when he surprised the appellants committing this unlawful act. The trial court believed that these witnesses testified the truth and found the appellants guilty of the crime of adultery. This finding of fact is fully supported by the testimony of record.

The trial court found and applied the aggravating circumstance of morada, and also, with reference to Ocampo, the aggravating circumstance of abuse of confidence. It is true that the crime was committed in the house of the offended husband, but it is likewise true that this same house was the home of both the appellants. Genoveva and Ocampo had a right to be in the house, the former because she was the wife of Ysla, and the latter because that was then his place of residence, he having gone there to live on the joint invitation of Ysla and his wife. Under these facts it was error to apply the aggravating circumstance of morada. (Decision supreme court of Spain, November 16, 1871, published in Official Gazette, January 9, 1872.) The trial court committed no error in applying the aggravating circumstance of abuse of confidence in imposing the penalty upon Ocampo, inasmuch as the record clearly shows that the offended husband took Ocampo into his home, furnished him with food and lodging without charge, and treated him like a son.

With reference to Genoveva, there being no aggravating and no extenuating circumstances, the penalty should be imposed in its medium degree. This was done by the court.

With reference to Gerardo de Ocampo, there being presents one aggravating circumstance and no extenuating circumstances, the sentence should be imposed in its maximum degree. This was likewise done by the court.

With the modifications as above set forth, the judgment appealed from is affirmed, with costs against the appellants. So ordered,

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

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