

THE UNITED STATES, PLAINTIFF AND APPELLEE VS. ANASTASIA DE LA TORRE AND CELEDONIO GREGORIO, DEFENDANTS. CELEDONIO GREGORIO, APPELLANT.

G.R. No. 8144. August 06, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of adultery. The complaint alleged: "That the said Celedonio Gregorio, the above-named accused, did on March 20, 1911, in the municipality of Cuyapo, Province of Nueva Ecija, willfully, unlawfully, and criminally lie with his codefendant, Anastasia de la Torre; that the two ran away and are now united in the house of the councilor of Naguisan, the accused knowing that the accused woman is legally married to the complainant; in violation of law.—CRISTINO (his mark) GAMIT."

The defendants were duly arrested and given a preliminary examination before the justice of the peace of the pueblo of Cuyapo of the Province of Nueva Ecija. After hearing the evidence, the justice of the peace found that there was sufficient reason for believing that the defendants were probably guilty of the crime charged, and held them for trial in the Court of First Instance of said province. The fiscal presented the above complaint in the Court of First Instance. Before the case was brought to trial, the defendant, Anastasia de la Torre, died, and the complaint against her was dismissed, with costs de oficio.

Upon the arraignment in the Court of First Instance, the other defendant, Celedonio Gregorio, pleaded not guilty and the cause was duly tried. After hearing the evidence the lower court found the defendant guilty of the crime charged in the complaint, and in accordance with the provisions of article 423 of the Penal Code sentenced him to be imprisoned for a period of three years four months and twenty-one days of prision correccional, with the accessory penalties provided for by the law, and to pay the costs. From that sentence the defendant, Celedonio Gregorio, appealed to this court.

In this court the appellant presents two questions. He alleges: First, that, inasmuch as the codefendant, Anastasia de la Torre, had died, the present defendant and appellant could not be tried. He does not support his argument by any authority. The complaint was presented by the offended husband against both of the adulterers. The presentation of the complaint against both of the defendants complied with the requirements of the law. The mere fact that one or the other of them died before the cause was brought to trial does not prevent the continuation of the cause against the survivor. Viada, in his valuable commentaries on the Penal Code (vol. 3, p. III), in discussing this question says:

"The wronged husband being unable in Spain to lodge his complaint for adultery except against both the guilty parties, if both be alive, it is clear that when the woman is dead he can lodge his complaint against the adulterer, for it is only when both are alive that he cannot lodge his complaint except against both the guilty parties at once."

We are of the opinion that the contention of the appellant that the lower court committed an error in proceeding

against the survivor alone after the death of his codefendant, after a complaint had been presented against both of them, is not enable. In our opinion no error was committed in respect to said assignment of error.

The only other contention made by the appellant is that the evidence adduced during the trial was insufficient to show that he was guilty of the crime charged. The evidence shows that the defendant and appellant had been living in the same house with his codefendant for some weeks or months and that he had been seen having actual illicit relations with his codefendant. The offended party was a tenant of the defendant and appellant. The defendant and appellant admits that he knew that Anastasia de la Torre and the offended party were husband and wife. The evidence clearly shows that the defendant was guilty of the crime charged.

The Attorney-General asks that the sentence of the lower court be modified and that the defendant and appellant should be required to pay only one-half of the costs of the lower court. With that suggestion of the Attorney-General we agree.

For all of the foregoing reasons the judgment of the lower court is hereby affirmed, with the modification that the defendant be required to pay only one-half the costs of the lower court. So ordered.

Arellano, C. J., Torres, Carson, Moreland, and Trent, JJ. concur.

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