

FILOMENA DEL PRADO, PLAINTIFF AND APPELLANT, VS. TIRSO DE LA FUENTE, DEFENDANT AND APPELLEE.

G.R. No. 9274. September 14, 1914

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-9274/>

TORRES, J.:

Appeal raised through bill of exceptions from the judgment dated June 23, 1913, whereby the Honorable Richard Campbell, judge, decided in appellee's favor the petition for divorce and partition of the conjugal property requested by the plaintiff, without special finding as to costs.

On December 29, 1910, counsel for Filomena del Prado filed a complaint in the Court of First Instance of Pangasinan, alleging that on or about June 17, 1893, the plaintiff contracted marriage with Tirso de la Fuente in the town of Urdaneta of said province, and that they thereafter lived together as husband and wife, having had several children of whom only one survived, named Emilio, who is at the present time 10 years of age and is in plaintiffs possession; that, since the period from June to November, 1910, her said husband had separated from and abandoned her, and lived in marital relations with Basilisa Padilla, a resident of Santa Barbara of the same province and wife of Isidro Nicolas; wherefore the plaintiff wished to be legally separated from the defendant, to have under her control her said child, and to enjoy the benefits the law allows in such cases, and therefore she prayed that judgment be rendered in her favor and against the defendant, declaring that she was entitled to be divorced from her husband and that she be granted all the benefits the law allows, both with respect to her child as well as to the property of the conjugal partnership.

Counsel for the defendant in his answer denied each and every one of the allegations of the foregoing complaint and each paragraph thereof; and in special defense alleged that defendant had been freely acquitted in criminal case No. 2787, wherein he was charged with adultery based on the same facts alleged in this complaint, and he asked for dismissal thereof, with the costs against the plaintiff.

Plaintiff moved to be permitted to unite to her complaint, as an integral portion thereof, a statement of the conjugal property of herself and her husband the defendant, which statement appears on page five of the bill of exceptions.

The case was tried on June 9, 1913, evidence was adduced by the parties, including the said criminal case, and as a result the court rendered the judgment set forth. Counsel for the plaintiff saved his exception thereto and asked for a new trial, which motion was denied by order of June 25, with exception on the part of the appellant, who presented the proper bill of exceptions, which was approved, certified, and forwarded to the clerk of this court with the evidence taken in the case.

The present action deals with the petition for divorce presented by Filomena del Prado, asking that she be separated from her lawful husband Tirso de la Fuente, with whom she contracted marriage on June 17, 1893. Her claim is based on the fact that, after they had lived together from their marriage up to the year 1910, in June of that year her husband separated from and abandoned her and went to live in marital relations with Basilisa Padilla,

a woman married to Isidro Nicolas; and therefore in the petition for divorce formulated by the wife of the defendant the ground therefor was stated to be the concubinage committed by her husband, in that he was illegally united with another woman who was not his wife.

The jurisdiction of the Court of First Instance is taken for granted, as it was not discussed, to hear and decide the present case in accordance with the provisions of various laws of titles 2, 9, and 10 of the fourth Partida and of section 56 of the Organic Act, No. 136 of the Philippine Civil Commission, from the provisions whereof and of other laws cited in the case of *Benedicto vs. De la Rama* (3 Phil. Rep., 34) it is inferred: (1) That the fact of concubinage of the legally married husband with another woman who is not his wife is classified as adultery by the said laws of the Partidas, just as the crime of concubinage is included in the chapter of the Penal Code in force treating of adultery, and the supreme court of Spain adopted the same classification of adultery in its decision of April 3, 1884, rendered in a trial for concubinage under article 452 of the Penal Code of Spain, analogous to article 437 of the code in force in these Islands; (2) that the fact of concubinage, as adultery committed by the husband with another woman to the humiliation of his own wife, is also legal ground for seeking divorce on the part of the injured woman; (3) that a prosecution for concubinage, as characterized in the ancient laws on adultery, can be maintained by the injured woman against the husband having the concubine; and (4) that the decision or judgment granting the divorce, with its consequences, does not dissolve the matrimonial bond but only provides for separation and suspension of the common life between the husband and wife and partition of their common property.

It has been held in a positive manner that the laws of the Partidas are the only ones applicable to divorce suits, for after the present Civil Code had been in force in these Islands twenty-four days a decree of the general government, dated December 29, 1889, issued by virtue of a telegraphic order of the Spanish Government, as published in the Official Gazette of Manila under date of the 31st of the same month and year, suspended the application and observance in these Islands of articles 42 to 107 and 325 to 332, comprised in titles 4 and 12, Book I, of the Civil Code.

In order, then, to decide whether the petition for divorce presented by the injured wife can be granted, it would be sufficient to determine whether the concubinage of the defendant husband accompanied with scandal and humiliation to his lawful wife, in uniting with another woman who has a husband still living, has been duly proven in this case. Such really appears to be fully demonstrated and his acquittal in the case prosecuted against him and his concubine at the instance of the latter's husband, Isidro Nicolas, cannot exonerate the defendant Tirso de la Fuente, because in that trial for adultery it was not successfully shown nor proven that the defendant knew that his concubine Basilisa Padilla was a married woman, wherefore his acquittal was based on the provision of the code to the effect that in order to commit the crime of adultery, the married woman must lie with a man other than her husband and he who lies with her must know that she is married, and as the defendant alleged in said case, without contradiction, that he did not know that his concubine was a married woman, he was acquitted of the charge of adultery, and the accused woman alone was found guilty, since it was shown that she was joined in lawful matrimony with her husband Isidro Nicolas, that she had separated from him and had lived with her codefendant, Tirso de la Fuente.

Both in the record of the case for adultery presented at this trial as evidence and in this case itself it appears to be fully proven that the defendant Tirso de la Fuente and Basilisa Padilla lived together in the former's house in Santa Barbara, Pangasinan, for after the husband separated from his wife he lived in marital relations from 1910, up to the date of the filing of the information in said case, in company with the said Basilisa Padilla, they having eaten together and slept in the same bed, and for that reason the woman was found guilty of the crime of which she was accused in the case for adultery.

It was alleged on defendant's behalf that adultery is the only ground upon which divorce can be granted, and that, although Tirso de la Fuente had been accused of adultery, he had been acquitted in the case prosecuted against him therefor. This acquittal is no impediment to granting the petition for divorce on the ground that it is based on the concubinage of the defendant.

The intimate life together and carnal relations of the defendant De la Fuente with Basilisa Padilla constitute adultery to the moral injury of the latter's husband Isidro Nicolas, and at the same time concubinage to the humiliation of the plaintiff, said defendant's wife. It is a criminal act partaking of the nature of a double crime.

Laws 2 and 3, title 9, of the fourth Partida, authorize the husband to prosecute his wife for adultery and the injured wife as well to prosecute her husband for said crime, which is classified later in the modern law as concubinage; and once the charge that the wife has committed adultery, or the husband concubinage, has been proven, the courts can decree the divorce in accordance with the provisions of law 3, title 2, of the fourth Partida.

The decision declaring the divorce to have been properly granted in this suit, on the ground that concubinage of the defendant husband with the adulteress Basilisa Padilla has been proven, does not conflict with the final judgment rendered in said case for adultery, prosecuted at the instance of the husband of the adulteress, because the fact that the adultery has been punished on account of the offense committed against the husband injured thereby and the judgment of acquittal in favor of the plaintiff's husband in that case, for the reason stated, do not affect her rights, nor form an obstacle to granting this petition, after the fact of the concubinage of the defendant husband has been held to be established in this case.

For the foregoing reasons, the judgment appealed from should be reversed and the divorce sought by the plaintiff be granted, as we do hereby grant it; and to that end we order the separation and suspension of the common life of the litigating spouses and the partition of the property of the conjugal partnership between the two, their minor, child named Emilio to remain in possession and under the care of its mother the plaintiff, the innocent party; and the costs of both instances to be imposed upon the defendant.

Arellano, C. J., Johnson and Araullo, JJ., concur.

Carson and Moreland, JJ., dissent.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.