

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN RIVERA AND RAFAELA VITUG, DEFENDANTS AND APPELLANTS.*G.R. No. 9540. September 10, 1914*

Ponente: TORRES, J.

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This case was brought up on appeal filed by counsel for the defendants from the judgment dated October 27, 1913, whereby the Honorable Julio Llorente, judge, found them guilty of concubinage with scandal and sentenced Juan Rivera to the penalty of one year eight months and twenty-one days of prision correccional and Rafaela Vitug to two years four months and one day of destierro, forbidding her to come within a radius of twenty-five kilometers of the municipality of Lubao, Pampanga. Both were sentenced to the accessories of the law, with allowance of credit for half the time of their detention, and to payment of the costs in equal parts.

It was fully shown at the trial that the defendant Juan Rivera legally married Anselma Garcia on June 3, 1893, in the town of Lubao, Pampanga, and during the first years of their marriage they had various children, of whom only Gregorio Rivera has survived; that said spouses continued to live together until 1902 when Rivera separated from his wife and went to live in marital relations with Rafaela Vitug, who was likewise separated from her husband Carlos Punsalan; that since the said year 1902 the defendant Rivera and Vitug have been living together as man and wife in different places and especially in the town of Lubao, Pampanga; that since that time they have been seen to go about always together in public, in the church, and even in the streets of this city of Manila, for on one occasion when the injured wife met them in one of the streets of Manila, Juan Rivera told her that he was seeking pretexts for separating from his concubine; that both in the houses the defendant Rivera had in the barrio of Pulita of the town of Florida blanca and in the barrio of San Vicente of Lubao, as well as in the house of the parents of the defendant Vitug in the barrio of San Francisco and in that of the grandfather of the defendant Rivera himself in the barrio of San Nicolas of the said town of Lubao, they were seen to retire together and to pass the nights lying in each other's embrace in the same bed.

The facts set forth really constitute the crime of concubinage with scandal, provided for and punished in article 437 of the Penal Code, for the defendant Juan Rivera, lawful husband of the complainant Anselma Garcia, separated from her and has been living from 1902 up to the date of the complaint, January 24, 1913, with Rafaela Vitug, also married, and they have been going about the streets of the town wherein they resided and performing overt acts of concubinage in sight of everybody, without any reserve or consideration of the offense to law and morality, their conduct producing a bad example among their neighbors and other acquaintances; wherefore it is beyond doubt that they have violated the penal law.

The defendants pleaded not guilty, and Rafaela Vitug, the only one who testified in the case, denied that she had lived in marital relations with her codefendant Juan Rivera.

Notwithstanding the facts stated, it appears from the trial that since 1902, when Juan Rivera ceased to live with his wife Anselma Garcia, until 1912, when the latter filed a complaint that her husband was living in concubinage

with another woman, with whom he has been living within and without the conjugal home for a period of more than ten years, the complainant has remained silent in spite of the fact that she frequently saw her husband in company with his concubine in the same town in which she lived.

On June 13, 1912, the offended woman filed a complaint in the justice of the peace court of Lubao, charging her husband Juan Rivera and Rafaela Vitug with adultery, because they had entered into marital relations with great scandal (p. 47); but by another document dated the 17th of the same month and year, the complainant Anselma Garcia set forth that in filing the foregoing complaint she had confided in the disinterested advice of certain persons, but as she could not rely upon the evidence to sustain it and having no interest in prosecuting it further, she desisted and withdrew it and asked for final dismissal of the case, which was ordered by the justice of the peace (p. 53). The next day, June 18, the separated spouses executed in the presence of two witnesses the document at page 44, ratified before a notary public, wherein they both appear to have declared among other things that because of incompatibility of habits and because they were unable to live together as husband and wife, by common agreement they had been separated since the year 1902, after which date it had been agreed that their only child Gregorio Rivera should continue to live with and be under the care of its mother Anselma Garcia, but that at any time their said child should desire and wish to live with its father for the sake of its education, its mother would not oppose this; and moreover they solemnly declared that each one renounced any claim for damages against the other, in case they might have such either at that time or in the future accruing to either by reason of their marriage, and therefore they renounced any right that they might have in their favor from that time thenceforward.

Nevertheless, under date of January 24, 1913, the injured woman again filed her complaint, charging her husband Rivera and his concubine Rafaela Vitug with the crime of concubinage with public scandal.

Article 437 of the Penal Code says:

"The husband who shall keep a concubine in his home, or out of it with scandal, shall be punished with the penalty of prison correccional in its minimum and medium degrees.

"The concubine shall be punished with banishment.

"The provisions of articles 434 and 435 are applicable to the case referred to in this article."

Article 434 of the same code says:

"No penalty shall be imposed for the crime of adultery except upon the complaint of the aggrieved spouse.

"The aggrieved spouse can only file such a complaint against both offenders, if both are living, and not at all if he or she has consented to the adultery or pardoned either of them."

If the provisions of the second paragraph of this article 434 are applicable to the case of a husband accused of concubinage with scandal, according to the provisions of the last paragraph of the above-quoted article 437 of the code, then when it has once been shown in this case that the complainant Anselma Garcia gave her consent to the concubinage of her husband with Rafaela Vitug, without having appealed to the authorities to denounce the act for more than ten years after they began to live together in the same town in which she resided, it is evident that she can institute no criminal action against her husband and his concubine, by reason of her consent, as prescribed in the above-quoted article 434 of the Penal Code.

The long period of time of over ten years that elapsed during which her husband Juan Rivera was separated from her after 1902 and living in marital relations with Rafaela Vitug, without its having occurred to her to denounce such unlawful conduct, although they all lived in the town of Lubao, where the immoral life her husband was

leading with the defendant Vitug was public and notorious, is proof of her consent thereto, and if only in June, 1912, it occurred to her to accuse him of adultery, although a few days later she desisted from her complaint and on the next day by common accord they executed the agreement of separation set forth in the document at page 44, ratified before a notary, the injured party has by such conduct demonstrated in an indubitable manner that if before 1912 she had given her consent to the illegal conduct of her husband, later she ratified it in a document setting forth that she withdrew the complaint she had presented and in the agreement of separation of which mention has been made.

It has been alleged by the defense that the injured woman filed the complaint against her husband in 1912 by inducement of persons opposed to him in the election for the office of municipal president of Lubao, for which her husband Rivera was a candidate; and that the later complaint filed in January of 1913 by like inducement was due to the fact that he had been elected president.

The theory to be deduced from these allegations is not impossible or unlikely, because the silence Anselma Garcia kept during ten years and her later attitude from the time when her erring husband might become president of the town of Lubao, as did happen, remain unexplained; but even putting aside such a theory and regarding it as a coincidence, it appears in the case that the injured woman Anselma Garcia consented to the concubinage of her husband from 1902 up to the date of her last complaint in January, 1913; and therefore, under the provisions of article 434 of the Penal Code, her complaint of concubinage with scandal must be dismissed by reason of her consent, indicated by her silence for over ten years.

It is to be noted that said crime is of almost a public nature, although for the prosecution and punishment thereof the cause must be instituted by virtue of a complaint of the injured spouse, in accordance with the last paragraph of article 437 of the Penal Code; and as it is not a crime of a private nature, it is not enumerated in Act No. 1773.

For the foregoing reasons, the judgment appealed from should be reversed and the case dismissed along with the complaint that instituted it, with the costs in both instances de officio. So ordered.

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

Carson, J., concurs in the result.

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