

43 Phil. 758

[G. R. No. 18513. September 18, 1922]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO PITOC AND MARCIANA DEL BASCO, DEFENDANTS. PEDRO PITOC, APPELLANT.

D E C I S I O N

STATEMENT

February 21, 1921, the defendant, Pedro Pitoc, was legally married to Petronila Roque in the city of Manila. For several years prior to their marriage, the defendant, Pedro Pitoc, had sustained illicit relations with Marciana del Basco. In a short time after the marriage, the defendant, Pedro Pitoc, and his wife left the city of Manila and went to Calumpit, Bulacan, to reside. Later Pedro Pitoc returned to Manila, leaving his wife at Calumpit, promising to return March 15, 1921. For his failure to return on March 17, 1921, his wife came to Manila to look for him, and later with Angel Roque verified the following complaint against her husband and his paramour:

“For the purposes of the law establishing divorce, the undersigned denounce and accuse Pedro Pitoc and Marciana del Basco of the crime of concubinage, committed as follows:

“That on or about the 23d day of June, 1921, and for some time prior to this date, in the city of Manila, Philippine Islands, the said accused, Pedro Pitoc, being legally married to the undersigned, Petronila Roque, voluntarily, illegally and criminally cohabited, lied and had sexual intercourse with his coaccused, Marciana del Basco, who voluntarily, illegally and criminally cohabited, lied and had sexual intercourse with the said Pedro Pitoc, knowing that her coaccused was legally united by marriage with the complainant referred to.

“Contrary to law.”

They were both found guilty as charged. Pedro Pitoc was sentenced to one year, eight months and twenty-one days of *prision correctional* with the accessory penalties provided by law, and to pay one-half of the costs, from which he appeals, claiming that the evidence was not sufficient to prove him guilty of the crime of concubinage, beyond a reasonable doubt, and that there was no evidence that the crime was committed “under scandalous circumstances.” His codefendant did not appeal.

Johns, J.;

The question involved here is the legal construction of article 437 of the Penal Code and the amendment thereof by section 1 of Act No. 2716, as they both relate to Act No. 2710.

Article 437, as originally enacted, reads as follows:

“Any married man who shall keep a mistress in the conjugal dwelling, or under scandalous circumstances elsewhere, shall suffer the penalty of *prision correctional* in its minimum and medium degrees.

“The mistress shall suffer the penalty of *destierro*.

“The provisions of articles four hundred thirty-four and four hundred and thirty-five shall be applied in the cast’s falling under this article.”

Section 1 of Act No. 2716 reads as follows:

“Article four hundred and thirty-seven of the Penal Code is hereby amended by inserting at the end thereof the following:

” ‘For the purposes of the law establishing divorce, the husband who, not being included in the preceding cases, cohabits with a woman who is not his wife, shall be considered guilty of concubinage and shall be punished with the penalty prescribed in this section for the crime of concubinage.’ “

It is not claimed that the defendant Pitoc kept a mistress in the conjugal dwelling, and the

evidence is not sufficient to prove, beyond a reasonable doubt, that he kept a mistress, under "scandalous circumstances," at any other place.

Section 1 of Act No. 2716, as it amends article 437 of the Penal Code, is very awkwardly worded, and is apparently misleading. But in the final analysis its meaning is clear. It will be noted that article 437 specifies two different grounds for invoking the penalty of *prision correctional*. First, that if any married man keeps a mistress in his conjugal dwelling, or, second, if he shall keep a mistress anywhere else under "scandalous circumstances," then he shall be guilty of the specified crime. The purpose and intent of the amendment was to add a third ground for the commission of the crime. When analyzed, the two acts should read. First, that, if any married man shall keep a mistress in his conjugal dwelling, or, second, should keep a mistress elsewhere under "scandalous circumstances," or, third, if he should "cohabit with a woman who is not his wife." In either event, he would then be guilty of the crime charged in article 437, and a conviction of either one of them would be sufficient to entitle a spouse to a divorce under the provisions of Act No. 2710.

Although the words used in the amendment "for the purposes of the law establishing divorce" are intended to be explanatory, they are not words of limitation, and are more or less surplusage. That is to say, if a husband cohabits with a woman who is not his wife, he is guilty of the crime of concubinage, regardless of whether she wants a divorce or not. The crime is not contingent upon anything the wife may do or may not do. The crime consists in the commission of anyone of the three specified grounds, neither of which is dependent upon the purpose or intent of the wife to obtain a divorce.

Hence, the question involved here is whether within the meaning of the law, the defendant cohabited "with a woman who is not his wife."

The word cohabit has many different meanings, each depending upon the sense in which it is used. Here, we have a law intended to prohibit a married man from keeping a mistress in his dwelling or anywhere else under "scandalous circumstances." Hence, the meaning of the word cohabit here must relate and be confined to the subject-matter of the law itself. When used in that sense, it should be construed to mean "to dwell or live together as husband and wife; to live together as husband and wife although not legally married; to live together in the same house, claiming to be married; to live together at bed and board." (Corpus Juris, vol. 11, p. 950.)

Words and Phrases, vol. 2, page 1243, says:

" 'Cohabit' means, according to Webster, first, to dwell with another in the same place; second, to live together as husband and wife.

"Bishop, in his work on Marriage, Divorce, and Separation, par. 1669, says to 'cohabit' is to dwell together, so that matrimonial cohabitation is the living together of a man and woman ostensibly as husband and wife.

"The word 'cohabit' is said to mean to dwell or live together as husband and wife. And as used in Pub. St. c. 207, par. 4, providing that whoever, having a former wife living, marries another or continues to cohabit with such second wife, is guilty of bigamy, etc.

" 'Obviously the legal sense of the term, as used in Acts 1877-78, p. 302, c. 7, par. 7, making it criminal for persons not married to cohabit together, is to live together in the same house as married persons living together or in the manner of husband and wife.'

"To 'cohabit' according to the sense in which the word is used in a penal statute, means dwelling together as husband and wife, or in sexual intercourse, and comprises a continued period of time. Hence the offense is not the single act of adultery; it is cohabiting in a state of adultery; and it may be a week, a month, a year, or longer, but still it is one offense only.

"To 'cohabit' means to dwell together, inhabit or reside in company, or in the same place or country. Specifically, 'to dwell or live together as husband and wife,' often with reference to persons not legally married, and usually, but not always, implying sexual intercourse. (Cox vs. State, 23 South., 806; 117 Ala., 103; 41 L. R. A., 760; 67 Am. St. Rep., 166 [quoting Cent. Dict.].)"

Applying the facts to such definition, it is undisputed that before his marriage to Petronila Roque, the defendant and his coaccused were living together for a number of years in illicit relations. The defendant, Pedro Pitoc, legally married Petronila Roque in the city of Manila on February 21, 1921, and together they went to Calumpit, Bulacan, to live. In a short time he left his wife there and came to Manila, promising to return on March 15, twenty-three days after their marriage. He never did return. March 17, his wife came to Manila where she found the defendant living in the same house and under the same roof with his former paramour, staying around her store and keeping company with her, under circumstances

which strongly tend to show that they had resumed their former relations. It is, indeed, significant that the defendant Pitoc would leave his wife whom he married on February 21 and return to Manila and go direct to, and obtain a room in, the same house where his former paramour was living, and violate his promise to return to his newly wedded wife on March 15.

Petronila Roque testified that she asked her husband if that woman, meaning his coaccused, was his paramour, and that he answered yes, and that she asked him what would be her situation and "he answered me that he could not abandon that woman, referring to Marciana del Basco, and that I could do anything I pleased."

This evidence was not denied by the defendant, Pedro Pitoc. When this is considered with the defendant's conduct and all the other evidence, surrounding facts and circumstances, the proof is conclusive that the defendant, Pedro Pitoc, did cohabit "with a woman who is not his wife," and that he is guilty of the crime charged.

The judgment is affirmed, with costs. So ordered.

Street, Malcolm, Ostrand, and Romualdez, JJ., concur.

Araullo, C. J., Avanceña, and Villamor, JJ., concur in the result.

Johnson, J., dissents.