

1 Phil. 375

[G.R. No. 504. September 16, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. TOMASA DE LOS
EEYES, DEFENDANT AND APPELLEE.**

D E C I S I O N

LADD, J.:

This is an appeal from the Court of First Instance of Manila, taken by the complaining witness, Julian Gonzalez, from a judgment of acquittal, upon a complaint for bigamy under article 471 of the Penal, Code.

The defendant was married to the complaining witness in Manila, May 27, 1897. After living together in Manila for a time they separated, the defendant remaining in the house where they had been previously living until some time subsequent to July 12, 1900. On that day she was married in Manila by a Protestant clergyman to Ramon Martinez. Her defence is that she honestly believed her first husband was dead when she married Martinez.

It appears that the mother and some other relatives of Gonzalez lived, after the separation, in the same house with the defendant. Gonzalez testifies that the separation took place in March, 1900, and that he also lived for some months in the lower story of the same house, the defendant living in the upper story. He further testifies that after he left this house and went to live elsewhere he visited his relatives there nearly every day down to a few days before the trial, which took place in September, 1901. He says that he often saw his wife at these times, supplying her with means for her support through his relatives, but that he never spoke with her. A short time after her second marriage the defendant moved away from the house and has since lived elsewhere.

The defendant testifies that she and Gonzalez had been living together a year and two months when the separation took place. That would fix the date of the separation in July, 1898. She testifies that some time during the year following the separation she was told by

the mother of Gonzalez that she had been informed that her son was dead, that thereupon prayers were said for his soul for nine nights, and that she put on mourning and wore it a year. She says that she contracted the second marriage with the consent of the mother of Gonzalez, and believing that the information which she had received from her as to the death of Gonzalez was true. The mother of Gonzalez died before the trial.

There was some further evidence from other witnesses On both sides, but it was of such a character as to throw but little light upon the facts of the case. On the whole, we have reached the conclusion, though not without some hesitation, that the story told by the defendant is in the main more likely to be true than false, and that she probably did contract the second marriage under *a bona fide* belief that the first marriage had been dissolved by the death of Gonzalez.

We have recently held, in the United States vs. Marcosa Penalosa and Enrique Kodriguez, decided January 27, 1902, that there can be no conviction under article 475 of the Penal Code, where by reason of a mistake of fact the intention to commit the crime does not exist, and we think the same principle must apply to this case. The defendant was therefore properly acquitted of the crime charged in the complaint.

We are, however, of the opinion that the defendant is chargeable with criminal negligence in contracting the second marriage, and should have been convicted under article 568 of the Penal Code. (See G. O., No. 58,.sec. 29.) It does not appear that she made any attempt to ascertain for herself whether the information received by her mother-in-law as to the death of Gonzalez was to be relied upon. She never even saw or communicated directly in any way with the persons who gave her mother-in-law this information. Moreover, viewing the testimony in the light most favorable to her, she waited less than two years after hearing of the death of her husband before contracting the second marriage. The diligence with which the law requires the individual at all times to govern his conduct varies with the nature of the situation in which he is placed and with the importance of the act which he is to perform. In a matter so important to the good order of society as that in question, where the consequences of a mistake are necessarily so serious, nothing less than the highest degree of diligence wiU satisfy the standard prescribed by the law. We can not say that the defendant has acted with that diligence in the present case.

Applying the provisions of article 568 of the Penal Code, the act of contracting a second or subsequent marriage, the prior marriage not having been lawfully dissolved, being one which, if done with malice, would constitute a grave crime, the offense committed by the

defendant is punishable by *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree. There being no aggravating circumstance, and as we think the extenuating circumstance of article 11 of the Penal Code may properly be considered in this case, this penalty should be applied in its minimum degree.

We therefore sentence the defendant to four months and one day of *arresto mayor* and costs. The judgment of the court below will be modified in accordance with this opinion. So ordered.

Arellano, C. J., Cooper, Smith, Willard, and Mapa, JJ., concur.
