

95 Phil. 845

[G.R. No. L-5877. September 28, 1954]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ARTURO MENDOZA, DEFENDANT AND APPELLANT.

D E C I S I O N

PARAS, C.J.:

The defendant, Arturo Mendoza, has appealed from a judgment of the Court of First Instance of Laguna, finding him guilty of the crime of bigamy and sentencing him to imprisonment for an indeterminate term of from 6 months and 1 day to 6 years, with costs.

The following facts are undisputed: On August 5, 1936, the appellant and Jovita de Asis were married in Marikina, Rizal. On May 14, 1941, during the subsistence of the first marriage, the appellant was married to Olga Lema in the City of Manila. On February 2, 1943, Jovita de Asis died. On August 19, 1949, the appellant contracted another marriage with Carmencita Panlilio in Calamba, Laguna. This last marriage gave rise to his prosecution for and conviction of the crime of bigamy.

The appellant contends that his marriage with Olga Lema on May 14, 1941 is null and void and, therefore, non-existent, having been contracted while his first marriage with Jovita de Asis August 5, 1936 was still in effect, and that his third marriage to Carmencita Panlilio on August 19, 1949 cannot be the basis of a charge for bigamy because it took place after the death of Jovita de Asis. The Solicitor General, however, argues that, even assuming that appellant's second marriage to Olga Lema is void, he is not exempt from criminal liability, in the absence of a previous judicial annulment of said bigamous marriage; and

the case of *People vs. Cotas*, 40 Off. Gaz., 3134, is cited.

The decision invoked by the Solicitor General, rendered by the Court of Appeals, is not controlling. Said case is essentially different, because the defendant therein, Jose Cotas, impeached the validity of his first marriage for lack of, necessary formalities, and the Court of Appeals found his factual contention to be without merit.

In the case at bar, it is admitted that appellant's second marriage with Olga Lema was contracted during the existence of his first marriage with Jovita de Asis. Section of the marriage law (act 3613), in force at the time the appellant contracted his second marriage in 1941, provides as follows:

Illegal marriages.—Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

- (a) The first marriage was annulled or dissolved;
- (b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at; the time of contracting such subsequent marriage, the marriage so contracted being valid in either case until declared null and void by a competent court.

This statutory provision plainly makes a subsequent marriage contracted by any person during the lifetime of his first spouse illegal and void from its performance, and no judicial decree is

necessary to establish its invalidity, as distinguished from mere annulable marriages. There is here no pretense that appellant's second marriage with Olga Lema was contracted in the belief that the first spouse, Jovita de Asis, has been absent for seven consecutive years or generally considered as dead, so as to render said marriage valid until declared null and void by a competent court.

Wherefore, the appealed judgment is reversed and the defendant-appellant acquitted, with costs de officio so ordered. .

Pablo, Bengzon, Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

DISSENTING:

REYES, J.:

I dissent.

Article 349 of the Revised Penal Code punishes with *prison mayor* "any person who shall contract a second or subsequent marriage before the former marriage has been dissolved".

Though the logician may say that where the former marriage was void there would be nothing to dissolve still it is not for the spouses to judge whether that marriage was void or not. That judgment is reserved to the courts. As Viada says "La santidad e importancia del matrimonio no permite que los casados juzguen por si mismos de su nulidad; esta ha de someterse precisamente al juicio' del Tribunal competente, y cuando este declare la nulidad del matrimonio, y solo entonces, se tendra por nulo; mientras no exista esta declaracion, la presuncion esta siempre a favor de la validez del matrimonio, y de consiguiente, el que contrae otro segundo antes de dicha declaracion de nulidad, no puede menos de incurrir la pena de este articulo." (3 Viada,Codigo penal p. 275.)

"This is a sound opinion," says Mr. Justice Tuason p the case of People vs. Jose Cotas, (CA), 40 Off. Gaz., 3145, "and is in line with the well-known rule established in cases of adultery, that "until by competent authority in a final judgment the marriage contract is set

aside, the offense to the vows taken and the attack on the family exist.”

Padilla and *Montemayor, JJ.*, concur.

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