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[G. R. No. L-9005. June 20, 1958]

ARSENIO DE LORIA AND RICARDA DE LORIA, PETITIONERS, VS. FELIPE APELAN FELIX, RESPONDENT.

D E C I S I O N

BENGZON, J.:

Review of a decision of the Court of Appeals, involving the central issue of the validity of the marriage *in articulo mortis* between. Matea de la Cruz and Felipe Apelan Felix.

It appears that long before, and during the War of the Pacific, these two persons lived together as wife and husband at Cabrera Street, Pasay City. They acquired properties but had no children. In the early part of the liberation of Manila and surrounding territory, Matea became seriously ill. Knowing her critical condition, two young ladies of legal age dedicated to the service of God, named Carmen Ordiales and Judith Vizcarra[1] visited and persuaded her to go to confession. They fetched Father Gerardo Bautista, Catholic parish priest of Pasay. The latter, upon learning that the penitent had been living with Felipe Apelan Felix without benefit of marriage, asked both parties to ratify their union according to the rites of his Church. Both agreed. Whereupon the priest heard the confession of the bedridden old woman, gave her Holy Communion, administered the Sacrament of Extreme Unction and then solemnized her marriage with Felipe Apelan Felix *in articilo mortis*,[2] Carmen Ordiales and Judith Vizcarra acting as sponsors or witnesses. It was then January 29 or 30, 1945.

After a few months, Matea recovered from her sickness; but death was not to be denied, and in January 1946, she was interred in Pasay, the same Fr. Bautista performing the burial ceremonies.

On May 12, 1952, Arsenio de Loria and Ricarda de Loria filed this complaint to compel defendant to render an accounting and to deliver the properties left by the deceased. They are grandchildren of Adriana de la Cruz, sister of Matea, and claim to be the only surviving

forced heirs of the latter. Felipe Apelan Felix resisted the action, setting up his rights as widower. They obtained favorable judgment in the court of first instance, but on appeal the Court of Appeals reversed and dismissed the complaint.

Their request for review here was given due course principally to consider the legal question-which they amply discussed in their petition and printed brief—whether the events which took place in January 1945 constituted, in the eyes of the law, a valid and binding marriage.

> "There is no doubt at all in the mind of this Court, that Fr. Gerardo Bautista, solemnized the marriage *in articulo mortis* of Defendant Apelan Felix and Matea de la Cruz, on January 29 and 30, 1945, under the circumstances set forth in the reverend's testimony in court. Fr. Bautista, a respectable old priest of Pasay City then, had no reason to side one or the other. * * * Notwithstanding this positive evidence on. the celebration or performance of the marriage in question, Plaintiffs-Appellees contend that that the same was not in articulo mortis, because Matea de la Cruz was not then on the point of death. Fr. Bautista clearly testified, however, that her condition at the time was bad; she was bedridden; and according to his observation, she might die at any moment (Exhibit 1), so apprehensive was he about her condition that he decided in administering to her the sacrament of extreme unction, after hearing her confession, x x x .The greatest objection of the Appellees and the trial court against the validity of the marriage tinder consideration, is the admitted fact that it was not registered.'

The applicable legal provisions are contained in the Marriage Law of 1929 (Act No. 3613) as amended by Commonwealth Act No. 114 (Nov. 1936) specially sections 1, 3, 20 and 21. There is no question about the officiating priest's authority to solemnize marriage.

There is also no question that the parties had legal capacity to contract marriage, and that both declared before Fr. Bautista and Carmen Ordiales and Judith Vizcarra that "they took each other as husband and wife."

The appellants' contention of invalidity rests on these propositions:

(a) There was no "marriage contract" signed by the wedded couple the witnesses and the priest, as required by section 3 of the Marriage Law; and
(b) The priest filed no affidavit, nor recorded the marriage with the local civil registry.

The factual basis of the first proposition—no signing—may seriously be doubted. The Court of Appeals made no finding thereon. Indeed if anything, its decision impliedly held such marriage contract to have been executed, since it said "the marriage in articulo mortis was a fact", and the only question at issue was whether "the failure of Fr. Bautista to send copies of *the certificate of marriage in question* to the Local Civil Registrar and to register the said marriage in the Record of Marriages of the Pasay Catholic Church * * * renders the said marriage invalid." And such was the only issue tendered in the court of first instance. (See p. 14, 34, Record on Appeal.)

However, we may as well face this second issue: Does the failure to sign the "marriage certificate or contract" constitute a cause for nullity?

Marriage contract is the "instrument in triplicate" mentioned in sec. 3 of the Marriage Law which provides:

> "Sec.3. *Mutual Consent*.—No particular form for the ceremony of marriage is required, but the parties with legal capacity to contract marriage must declare, in the presence of the person solemnizing the marriage and of two witnesses of legal age, that they take each other as husband and wife. *This declaration shall be set forth in an instrument in triplicate*, signed by signature or mark by the contracting parties and said two witnesses and attested by the person solemnizing the marriage. * * *." (Italics ours).

In the first place, the Marriage Law itself, in sections 28, 29 and 30 enumerates the causes for annulment of marriage. Failure to sign the marriage contract is not one of them.

In the second place, bearing in mind that the "essential requisites for marriage are the legal capacity of the contracting parties and their consent" (section 1), the latter being manifested by the declaration of "the parties" "in the presence of the person solemnizing the marriage and of two witnesses of legal age that they take each other as husband and wife"—which in this case actually occurred.[3] We think the signing of the marriage contract or certificate was required by the statute simply for the purpose of evidencing the act.[4] No statutory provision or court ruling has been cited making it an *essential* requisite—not the *formal* requirement of evidentiary value, which we believe it is. The fact of marriage is one thing; the proof by which it may be established is quite another.

> "*Certificate and Record*.—Statutes relating to the solemnization of marriage usually provide for the issuance of a certificate of marriage and for the registration or recording of marriage * * * Generally speaking, the registration or recording of a marriage is not essential to its validity, the statute being addressed to the officials issuing the license, certifying the marriage, and making the proper return and registration or recording." (Sec. 27 American Jurisprudence "Marriage" p. 197-198.)
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> "*Formal Requisites*.—* * *The general rule, however, is that statutes which direct that a license must be issued and procured, that only certain persons shall perform the ceremony, that a certain number of witnesses shall be present, *that a certificate of the marriage shall be signed*, returned, and recorded, and that persons violating the conditions shall be guilty of a criminal offense, are addressed to persons in authority to secure publicity and to require a record to be made of the marriage contract. *Such statutes do not void* common-law marriages unless they do so expressly, *even where such marriage are entered into without obtaining a license* and are not recorded. *It is the purpose of these statutes* to discourage deception and seduction, prevent illicit intercourse under the guise of matrimony, and relieve from doubt the status of parties who live together as man and wife, *by providing competent evidence of the marriage.* * * *." (Section 15 American Jurisprudence "Marriage" pp. 188-189.) Italics Ours. (See also Corpus Juris Secundum "Marriage" Sec. 33.)

And our law says, "no marriage shall be declared invalid because of the absence of one or several formal requirements of this Act * * *." (Section 27.)

In the third place, the law, imposing on the priest the duty to furnish to the parties copies of such marriage certificate (section 16) and punishing him for its omission (section 41) implies *his obligation to see* that such "certificate" is executed accordingly. Hence, it would not be fair to visit upon the wedded couple in the form of annulment, Father Bautista's omission, if any, which apparently had been caused by the prevailing disorder during the liberation of Manila and its environs.

Identical remarks apply to the priest's failure to make and file the affidavit required by sections 20 and 21. It was the priest's obligation; non-compliance with it, should bring no serious consequences lo the married pair, specially where as in this case, it was caused by

the emergency.

> "The mere fact that the parish priest who married the plaintiff's natural father and mother, while the latter was in articulo mortis, failed to send a copy of the marriage certificate to the municipal secretary, does not invalidate said marriage, since it does not appear that in the celebration thereof all requisites for its validity were not present, the forwarding of a copy of the marriage certificate not being one of the requisites." (Jones *vs.* Hortiguela, 64 Phil. 179.) See also Madridejo *vs.* De Leon, 55 Phil. 1.

The law permits *in articulo mortis* marriages, without marriage license; but it requires the priest to make the affidavit and file it. Such affidavit contains the data usually required for the issuance of a marriage license. The first *practically substitutes* the latter. Now then, if a marriage celebrated without the license is not voidable (under Act 3613),[5] this marriage should not also be voidable for lack of such affidavit.

In line with the policy to encourage the legalization of the union of men and women who have lived publicly in a state of concubinage [6], (section 22), we must hold this marriage to be valid.

The widower, needless to add, has better rights to the estate of the deceased than the plaintiffs who are the grandchildren of her sister Adriana. "In the absence of brothers or sisters and of nephews, children of the former, * * * the surviving spouse * * * shall succeed to the entire estate of the deceased." (Art 952, Civil Code.)

Wherefore, the Court of Appeals' decision is affirmed, with costs. So ordered.

Paras, C. J., Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

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[1]Now a nun at Sta. Escolastica College.

[2]In his presence, Matea and Felipe expressed mutual consent to be thenceforward husband and wife.

[3]p. 49 Record on Appeal.

[4]And to prevent fraud, as petitioners contend. p. 30 brief. See Corpuz Juris Secundum, Vol. 55 p. 899.

[5]Because it is a formal requisite" (Section 7 as amended. See American Jurisprudence. supra. However, the New Civil Code seemingly rules and otherwise. (Art. 80 (3)).

[6]Section 22 Act 3613; Article 76 New Civil Code.

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