

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DAYATON MANIBPEL, DEFENDANT AND APPELLANT.

G.R. No. L-15077. December 29, 1962

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Dayaton Manibpel from the decision of the Court of First Instance of Cotabato in Criminal Case No. 2293 finding him guilty of bigamy and sentencing him to an indeterminate penalty of six (6) months of arresto mayor, as minimum, to two (2) years, four (4) months and one (1) day of prision correccional, as maximum, and to pay the costs. The court considered in his favor the mitigating circumstance of his being a Muslim inhabitant of a Moro province.

Appellant was charged with bigamy as follows:

"That in or about December, 1954, in the barrio of Lamperal, Municipality of Bañga, province of Cotabato, Philippines and within the jurisdiction of this Honorable Court, the said accused Dayaton Manibpel, being previously united in lawful marriage with Condong Makambang, and without the said marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a subsequent or second marriage with Mora Babaya Badio."

On arraignment, he pleaded not guilty. During the trial and while the prosecution's third witness, Adel Pamanay, was being cross-examined, appellant agreed that should said witness swear by the Koran to the truth of his testimony, he would withdraw his plea of not guilty and substitute it with one of guilty. As after concluding his testimony Pamanay swore by the Koran, appellant was arraigned anew and—as he had promised—pleaded guilty. The court forthwith rendered—so it thought—a judgment sentencing appellant to suffer an indeterminate penalty of not less than six (6) months of arresto mayor nor more than two (2) years, four (4) months and one (1) year of prision correccional, and to pay the costs.

Appellant appealed, but upon motion of the Solicitor General, we remanded the case to the trial court because the decision was not signed. On September 29, 1958, the lower court rendered the appealed judgment—a reiteration of the previous unsigned decision. Hence the present appeal.,

Appellant contends in the first assignment of error that the case should be remanded below for further proceedings on the ground that "the trial court erred in sanctioning the swearing by the Koran as the basis of the withdrawal by the appellant of the original plea of "not guilty" and its substitution with a plea of guilty."

In his second assignment of error he contends that, if convicted, the penalty to be imposed upon him should be at least two degrees lower than prision mayor because he is entitled to the consideration in his favor of the following mitigating circumstances, namely: the fact that he is a Muslim residing in Mindanao; lack of instruction; mistake of fact, and voluntary plea of guilty.

We find no merit in appellant's contentions.

It appearing from the record that upon re-arraignment appellant voluntarily withdrew his plea of not guilty and substituted it with one of guilty, the fact that he did so because prosecution witness Pamanay, after the conclusion of his testimony given under the usual oath, swore by the Koran that his aforesaid testimony was true, becomes of no consequence. As a matter of fact, even if Pamanay took no such oath by the Koran, appellant's withdrawal of his original plea and his subsequent plea of guilty would have been perfectly regular. On the other hand, it is obvious that the fact that Pamanay did not hesitate to swear by the Koran that his whole testimony—given under oath—was true is further guarantee of his credibility.

In connection with the second assignment of error, the record shows that the fact that appellant is a Muslim residing in Mindanao was already taken into consideration by the lower court. His alleged lack of instruction, on the other hand, cannot be considered in his favor because of lack of evidence to prove it, while the alleged "mistake of fact" committed by him, even if true, does not constitute a mitigating circumstance. Lastly, his plea of guilty cannot be considered in his favor because it was entered only after three prosecution witnesses had completed their testimony.

Wherefore, the appealed decision being in accordance with law, the same is affirmed, with costs.

Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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