

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CECILIA MEMORACION AND DALMACIO URI, DEFENDANTS AND APPELLANTS.

G.R. No. 11371. August 01, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of adultery. On the 7th of June, 1915, a complaint was presented against them in the court of the justice of the peace of the municipality of Albay. A preliminary examination was held, at the close of which the justice of the peace found that there was probable cause for believing that the defendants were guilty of the crime charged in the complaint, and held them for trial in the Court of First Instance.

On the 26th of June, 1915, the offended party presented a complaint against the said defendants. Later, on the 23d of August, 1915, the said offended party presented an amended complaint, which alleged:

"That the said accused, Cecilia Memoracion, on or about June 6, 1915, within the district of the municipality of Albay, Province of Albay, P. I., being legally and lawfully married to the complainant, the offended party Eustaquio Abrigo, did, willfully and criminally, unite, lie and have carnal intercourse with her coaccused, Dalmacio Uri; that the said accused, Dalmacio Uri, then knowing that his coaccused, Cecilia Memoracion, was legally and lawfully married to the aggrieved party, Eustaquio Abrigo, did, willfully and criminally, unite, lie and have carnal intercourse with his coaccused, Cecilia Memoracion; acts committed with violation of law."

Upon said complaint the defendants were duly arraigned and each pleaded not guilty of the crime charged in the complaint. The cause was brought on for trial and after hearing the evidence the Honorable J. C. Jenkins, judge, in a carefully prepared opinion, found that the defendants were guilty of the crime charged in the complaint and sentenced each of them to be imprisoned for a period of four years, nine months and eleven days of prison correccional with the accessory penalties of article 61 of the Penal Code and each to pay one-half the costs. From that sentence each of the defendants appealed to this court. In this court the appellants make the following assignments of error:

"(1) In not sustaining the objection filed by the defense during the trial of the case to the following questions,

" 'Q. How are you related to the defendant woman?

" 'Mr. Sierra. Objected to as not best proof.

" 'The Court. I will allow the evidence.

" 'A. She is my wife.'

"And, therefore, in allowing the taking of evidence with respect to the alleged marital relation between the complaint and the coaccused Cecilia Memoracion. (2) In admitting as evidence the alleged marriage certificate issued by the parish priest of Daraga; and, therefore, in overruling the objection filed by the attorney for the defense against the introduction of Exhibit G, as evidence for the prosecution. (3) In the court himself

personally addressing the following questions to the witness Nicolas Briola:

" 'Q. Did you know her (referring to the defendant) when she was married to Eustaquio?—A. Yes, sir.

" 'Q. Were you at the wedding?—A. I was there.'

"And in refusing to strike out of the record the testimony of the witness Nicolas Briola, overruling the motion so to do, made by the defense. (4) In holding in the judgment that the alleged marriage of the complainant Eustaquio Abrigo with the coaccused Cecilia Memoracion is a proven fact. (5) In holding that there is legal presumption of the existence of the marriage between the complainant Abrigo and the coaccused Memoracion. (6) In holding as a proven fact that the accused Dalmacio Uri knew, on the night of June 6, 1915, that Cecilia Memoracion and Eustaquio Abrigo were husband and wife. (7) In holding that the accused are guilty of the crime of adultery, and in sentencing them to the penalty of four years nine months and eleven days of prison correccional, with the accessory penalties and costs."

With reference to said assignments of error, the first, third and fourth may be discussed together for the reason that they present but one question. The question presented by the said assignments of error is whether or not oral testimony is competent proof of a marriage in the case of the crime of adultery. The first assignment of error is based upon the fact that the husband was asked the question whether or not he and the defendant Cecilia Memoracion were married and whether or not they were husband and wife. The appellants contend that his declaration was not competent evidence upon that fact. If a man and a woman are married, the declaration of either of them is competent evidence to show the fact. No witness is more competent than they are. Whether the declaration of a husband alone is sufficient to prove that fact must depend upon each particular case. There might, perchance, be a case where the judge would not believe the declaration of the husband or wife upon the question of the marriage. In such a case corroborative proof might become necessary. Corroboration of the fact is not absolutely necessary if the declaration of either the husband or wife is sufficient to satisfy the conscience of the court. Certainly there are no witnesses more competent than the husband and wife to testify as to whether they were married or not. Under the third assignment of error, the same question is presented with reference to the oral declaration of Nicolas Briola. The appellant contends that his oral declaration should not have been accepted upon the question whether the marriage existed or not. He testified that Cecilia Memoracion and Eustaquio Abrigo had been married and that he was present at the wedding. A witness who is present at the time a marriage takes place is certainly a competent witness to testify as to whether a marriage took place or not. Whether or not his declaration should be accepted depends upon his credibility, but his declaration is admissible for the purpose of showing that fact.

In reaching the foregoing conclusion we have not overlooked the decision of this court in the case of *U. S. vs. Nebrida and Saorda* (32 Phil. Rep., 160.) In that case the court simply said that the substantially uncorroborated testimony of the complaining witness in a case of adultery as to the fact of the marriage is not sufficient to establish the fact, beyond a reasonable doubt, in a criminal action. In the present case the declaration of the husband as to the marriage was corroborated by proof that he and his alleged wife had been living together for a period of twenty years. That fact alone gave rise to the presumption that they were husband and wife. And not only that, but the declaration of the husband was supported by the testimony of another witness who was present at the time the marriage took place. We are fully convinced that Eustaquio Abrigo and Cecilia Memoracion were legally married and that they were husband and wife.

With reference to the second assignment of error, the appellant claims that the lower court committed an error in admitting as proof Exhibit G. Exhibit G purports to be a marriage certificate issued by the parish priest, and purports to certify that Eustaquio Abrigo and Cecilia Memoracion were married. While it is true that the lower court admitted Exhibit G over the objection of the defendant, it will be noted, upon an examination of the decision

of the lower court, that it was rejected and was not considered as proof. The lower court said in the course of his decision:

"It is true the certificate of marriage by the parish priest (Exhibit G) was, on the trial, improperly admitted, but it is now excluded from the record and will not be considered by the court as evidence."

In view of that fact, therefore, we find no reason for sustaining the contention of the appellant. Exhibit G was not considered as proof for the purpose of determining the existence of the marriage in question.

With reference to the fifth assignment of error, the lower court in the course of his opinion said:

"They (the alleged husband and wife) deported themselves as husband and wife and, therefore there is the presumption that they had entered into a lawful contract of marriage, independent of the positive testimony of an eye-witness and the husband."

Subparagraph 28 of section 334 of Act No. 190 which relates to disputable presumptions provides:

"That a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage."

In discussing that provision of said Act No. 190, this court said in the case of *United States vs. Villafuerte* (4 Phil. Rep., 559):

"A man and woman who are living in marital relations under the same roof are presumed to be legitimate spouses, united by virtue of a legal marriage contract, and this presumption can only be rebutted by sufficient contrary evidence."

In view of the above quoted provision of Act No. 190 and the decision of this court upon the same, it remains to be seen whether or not the alleged spouses had "deported themselves as husband and wife." The record shows that they had been living in the same house, under the same roof, and had been cohabiting together for a long period of time. That fact is not denied, nor even questioned by anything found in the record.

With reference to the sixth assignment of error, the appellants contend that the defendant Dalmacio Uri, at the time the alleged illicit relations took place, did not know that Cecilia Memoracion was a married woman. That the said Uri and Memoracion had had illicit relations at the time and place described in the complaint is not denied. The proof shows beyond a reasonable doubt, by eye-witnesses, that they had had the illicit relations charged in the complaint. The husband of Cecilia declared that they had lived together as husband and wife in the community where the crime was alleged to have been committed for a number of years; that the fact that they were husband and wife was well known in that community. It is also shown that the defendant Dalmacio Uri had visited the house of Cecilia and her husband a great number of times; that he had seen them together in the same house, and that he knew that they were living there together. The defendant Uri had been in the community where the crime was committed for a number of months. It can scarcely be believed, in view of the fact that he had visited the house of Eustaquio and Cecilia twenty or more times before the commission of the crime, that he did not at least know that they were married and were husband and wife. In view of the fact that he had frequently visited the house where Eustaquio and Cecilia were living and saw their relations, one toward the other, we are convinced, in the absence of positive proof to the contrary, that he must have known that they were at least living together as husband and wife.

With reference to the seventh assignment of error, it may be said, after a careful examination of the evidence, that we are convinced, beyond a reasonable doubt, that the defendants were guilty of the crime charged and that the sentence of the lower court is in accordance with the facts and the law. Therefore the sentence of the lower court is hereby affirmed, with costs. So ordered.

Torres, Moreland, Trent, and Araullo, JJ., concur.

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