

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FEDERICO BUSTAMANTE, DEFENDANT AND APPELLANT.

G. R. No. 11598. January 27, 1959

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Charged and convicted of the crime of bigamy in the Court of First Instance of Pangasinan, Federico Bustamante appealed to this Court on points of law.

The records disclose that defendant-appellant Bustamante was united in wedlock to one Maria Perez on August 9, 1954, before the Justice of the Peace of Binalonan, Pangasinan (Exh. "A", pp. 9-11, t.s.n.). A little over a year later, or on September 16, 1955, he contracted a second marriage with Demetria Tibayan, solemnized before Vice-Mayor Francisco B. Nato of Mapandan, Pangasinan, who was then acting as Mayor of said municipality (Exh. "B"), while the first marriage was still subsisting. Defendant dwelt with Demetria and her parents for about a month, after which time he returned to Calasiao, Pangasinan to live with the first wife, Maria Perez. In the course of her search for him, Demetria discovered from the Binalonan municipal authorities the previous marriage of defendant Bustamante. Hence, this accusation.

Defendant did not testify in his behalf during the trial. The main problem poised in this appeal concerns the authority of Francisco Nato to solemnize the second marriage.

It appears that Enrique Aquino and Francisco Nato were the duly elected mayor and vice-mayor, respectively, of the municipality of Mapandan, Pangasinan in the elections of 1951. On September 16, 1955, Aquino went on leave of absence for one month. In view of this, the vice-mayor was designated by the mayor to take over the rein of municipal government during his absence; and; Nato was acting in this capacity when he performed the second marriage of Bustamante with Demetria Tibayan. Appellant, relying upon article 56 of the Civil Code of the Philippines —

"Art. 56. Marriage may be solemnized by:

- (1) The Chief Justice and Associate Justices of the Supreme Court;
- (2) The Presiding Justice and the Justices of the Court of Appeals;
- (3) Judges of the Courts of First Instance;
- (4) Mayors of cities and municipalities;
- (5) Municipal judges and justices of the peace;
- (6) Priests, rabbis, ministers of the gospel of any denomination, church, religion or sect, duly registered, as provided in article 92; and
- (7) Ship captains, airplane chiefs, military commanders, and consuls and vice-consuls in special cases provided in articles 74 and 75."

contends that there could not have been a second marriage to speak of, as Nato was merely acting as mayor when he celebrated the same, hence, without authority of law to do so. He lays stress on the distinction made by this

Court in the case of *Salaysay vs. Hon. Fred Ruiz Castro, et al.*,[*] 52 Off. Gaz. No.2, 809, between an "Acting Mayor" and a "Vice-Mayor acting as Mayor", urging that while the former may solemnize marriages, the latter could not.

We find this contention untenable. When the issue involves the assumption of powers and duties of the office of the mayor by the vice-mayor, when proper, it is immaterial whether it is because the latter is the Acting Mayor or merely acting as Mayor, for in both instances, he discharges all the duties and wields the powers appurtenant to said office (*Laxamana vs. Baltazar*,[1] 48 Off. Gaz. No.9, 3869; Sec. 2195, Revised Administrative Code). The case of *Salaysay vs. Castro* (*supra*) cited by the appellant, which revolves upon the interpretation of section 27 of the Revised Election Code, is entirely distinct from the one at bar. This instance does not involve a question of title to the office, but the performance of the functions thereunto appertaining by one who is admitted to be temporarily vested with it. As correctly observed by the lower court, that case even concedes and recognizes the powers and duties of the Mayor to devolve upon the Vice-Mayor whenever the latter is in an acting capacity. The word "acting" as held in the case of *Austria vs. Amante*,[2]45 Off. Gaz. 2829, when preceding the title of an office connotes merely the temporary character or nature of the same.

The information charges that the appellant contracted the second marriage before the Justice of the Peace of Mapandan, Pangasinan, while the marriage certificates, Exh. "B", and the testimonies of witnesses indicate clearly that it was performed by Francisco Nato. Appellant assigns as error the admission by the lower court of the said evidence, notwithstanding counsel's objection. This is not reversible error. The wrong averment, if at all, was unsubstantial and immaterial that need not even be alleged, for it matters not who solemnized the marriage, it being sufficient that the information charging bigamy alleges that a second marriage was contracted while the first still remained undissolved. The information filed in this case which properly states the time and place of the second wedding, was sufficient to apprise the defendant of the crime imputed. Neither procedural prejudice nor error was committed by the lower court in finding appellant guilty.

Article 349 of the Revised Penal Code attaches the penalty of prison mayor to the crime of bigamy. Pursuant to the Indeterminate Sentence Law, the court must impose an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the Code (in this case the medium period of prison mayor, there being no aggravating nor mitigating circumstances), and minimum which shall be within the range of the penalty next lower to that prescribed for the offense (or prison correccional medium) (*People vs. Gonzales*, 73 Phil. 549).

The penalty imposed by the lower court (imprisonment for not less than Two (2) Years, Four (4) Months and One (1) Day of prison correccional and not more than Eight (8) Years and One (1) Day of prison mayor) a being in accordance with law, is affirmed. Costs against appellant.

So Ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

* 98 Phil., 364.

[1] 92 Phil., 32.

[2] Phil., 780.

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