

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. ANUNCIACION ROSAL (ALIAS MARIA A. ROSAL), DEFENDANT AND APPELLEE.

G. R. No. 25706. November 02, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an appeal taken by the prosecution from an order of the Court of First Instance of Ilocos Sur sustaining a demurrer filed by the defense to the following complaint:

"That the said accused Anunciacion Rosal (alias Maria A. Rosal), having become the widow of Guillermo Rabe on June 29, 1925, did willfully, maliciously, illegally and criminally contract a second marriage with Justino Velasco on or about August 19, 1925, in the municipality of San Ildefonso, Province of Ilocos Sur, Philippine Islands, before the lapse of 301 days from the death of her first husband Guillermo Rabe, i. e., from June 29, 1925 to August 19, 1925 on which latter date, as aforesaid, she contracted a second marriage with Justino Velasco. Contrary to law."

The demurrer is on the ground that the charge does not constitute a crime. The court, by order of February 26, 1926, sustained the contention of the defense and dismissed the case, with the costs de oficio. From this order the prosecuting attorney appealed to this court in accordance with section 44 of General Orders No. 58.

It is alleged in support of this demurrer that article 476 of the Penal Code is the penal sanction of article 45 of the Civil Code; and Title 4 of the Civil Code, which includes article 45, having been suspended, said article 476 of the Penal Code is not applicable for lack of subject-matter.

As may be seen, the question submitted for our determination is whether or not article 476 of the Penal Code is in force.

First of all, it must be observed that the Penal Code of the Philippine Islands was published in the Gazette of Manila on March 13, 1887 and went into effect four months after its publication, while the Civil Code was published and became effective as a law in the Philippine Islands on December 8, 1889. It is true, as Viada says in his commentaries on the Penal Code, that article 476 of the Penal Code of Spain is a sanction of article 45, paragraph 2, of the Civil Code. It is also true that the legal effects of Title 4 of Book 1 of our Civil Code, which includes article 45, was suspended by order of Governor-General Weyler on December 31, 1889. But the indisputable fact remains that article 476 of the Penal Code was already in force in the Philippine Islands before the promulgation of the Civil Code, which shows that said article is not dependent for its existence upon the provisions of the latter code. It thus results that the suspension of a part of the Civil Code cannot legally affect the provisions of the Penal Code under consideration. Furthermore, it must be borne in mind that the object of the penal sanction established in article 476 is, as acknowledged by the trial court, to prevent doubtful paternity and therefore a marriage contracted in violation of its provisions is punishable. The fact that General Orders No. 68, in its second section, Does not make a marriage illegal and void if contracted within the period prohibited by article

476 of the Penal Code, does not mean that this article has been repealed, for the reason that the sanction of the Penal Code does not declare such marriage contracted by a widow void or voidable; but that notwithstanding its validity, a widow who thus contracts marriage is criminally liable as committing an act in violation of the law.

On the other hand, the Code of Civil Procedure which went into effect on October 1, 1901, may be said to supply the proof that article 476 of the Penal Code, based, as it is, on a sound principle of public policy, is-in force. Section 333, paragraph 3, of the Code of Civil/Procedure establishes the conclusive presumption that the issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate, if not born within the one hundred eighty days immediately succeeding the marriage, or after the expiration of three hundred days following its dissolution. Without the penal sanction of article 476 of the Penal Code such presumption might produce inconsistent effects. Thus, a widow can contract a second marriage on the tenth day after becoming a widow and give birth to a child two hundred seventy-nine days after the second marriage. This child, having been born within three hundred days after the death of the first husband, might conclusively be presumed to be the legitimate child of the first husband; and, yet, for the very reason that it was born one hundred eighty days after the second marriage, the same child would unquestionably be presumed to be the legitimate child of the second husband. In order to avoid the possibility of such situation, it is necessary to apply article 476 of the Penal Code.

In the case of *United States vs. Dulay* (10 Phil., 302), this court, although in an indirect manner, took occasion to express its opinion that article 476 of the Penal Code imposes a punishment upon a widow who marries before three hundred one days after the death of her husband, and that said prohibition is in harmony with other legal provisions and is intended to prevent confusion in connection with filiation and paternity inasmuch as the widow might have conceived and become pregnant by her late husband.

For the foregoing we are of the opinion, and so hold, that article 476 of the Penal Code is in force and therefore the order appealed from must be, as it is hereby, revoked and the record is ordered remanded to the trial court for further proceedings in accordance with the law, with the costs de oficio. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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