

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BITDU, DEFENDANT AND APPELLANT.

G.R. No. 38230. November 21, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from the following decision of Judge A. Horilleno in the Court of First Instance of Zamboanga:

"There is no dispute between the prosecution and the defense as to the fact that Mora Bitdu was married to Moro Halid before an Imam in Lamitan of this Province of Zamboanga in accordance with Mohammedan rites more than twelve years ago, and that about seven months ago she was also married to Moro Hajirol before a Hadji in accordance with Mohammedan customs.

"It is therefore a fact admitted by both the prosecution and the defense that the accused contracted two marriages, one with Halid and another with Hajirol. She claims, however, that the second marriage contracted by her with Hajirol took place after she had been divorced from her first husband Halid in accordance with Mohammedan customs, said divorce having taken place before Datu Gavino Cuevas, of Isabela de Basilan.

"With this defense, two very important questions are raised before this court: first whether or not the alleged divorce took place in accordance with Mohammedan customs, and second, assuming that the divorce took place in accordance with such customs, is such divorce legal?

"With reference to the first question, two witnesses testified, one for the prosecution and the other for the defense. The first witness testified that the divorce between Mohammedans in Mindanao may be obtained before any person designated and agreed upon by the parties. The second testified that divorce, like any other act relative to marriage and separation of Mohammedan spouses, is obtained under certain conditions, to wit, the interested parties or the spouses intending to secure a divorce select the person before whom the divorce is to take place, and both parties are represented by persons designated by them.

"Chapter IV, section 35 of the Koran says:

" '35. And if you fear a breach between the two, then appoint a judge from his people and a judge from Her people; if they both desire agreement, Allah will effect harmony between them; surely Allah is knowing; Aware.'

"The court is inclined to believe that the testimony of the witness for the defense on this question is more in harmony with the doctrines of the Koran than that of the witness for the prosecution.

"Now, has the defense established that the divorce took place in accordance with the commandments of the Koran? The defense presented no evidence to show that the conditions prescribed by the Koran had been complied with by the parties when they obtained their divorce before Datu Cuevas. Said divorce therefore between the defendant and Halid does not satisfy the conditions prescribed by the Koran and consequently said divorce seems to be of doubtful religious validity.

"However, even admitting that this divorce was secured in accordance with the conditions prescribed by Mohammedan doctrines, is such divorce legal? The laws governing marriage and its incidents are moral in nature and as such they are laws relating to public policy. In the Philippine Islands we have a law (Act No. 2710) enumerating the causes and the conditions under which divorce may be secured and granted. Any divorce obtained in the Philippine Islands for causes and under conditions other than those enumerated in said law, would have no legal effect. The habits and customs of a people, the dogmas or doctrines of a religion cannot be superior to or have precedence over laws relating to public policy, because as stated above laws relating to marriage and its incidents are moral in nature and as such they affect public policy.

"The court therefore is of the opinion that even if the divorce alleged by the defense was secured in conformity with Mohammedan doctrines, such divorce cannot prevail against the Divorce Law of the Philippine Islands prescribing the causes and conditions under which divorce may be obtained. In this case, as above demonstrated, the divorce in question has not been obtained in accordance with the law.

"Examined from whatever angle, the divorce alleged by the defense cannot be accepted by this court for the reasons above set forth.

"In view of the foregoing facts and considerations, we cannot escape the conclusion that the defendant herein contracted a second marriage without her former marriage having been first dissolved.

"In the consideration of this case, however, the court cannot but take into account that the defendant is a Mohammedan woman; and being a follower of Mohammedan doctrines she no doubt contracted the second marriage honestly believing that in doing so she was not committing any violation of the law, although of course her belief does not justify her act.

"In view of the foregoing, and it appearing that the defendant is only seventeen years of age and therefore in the opinion of the court it would be more convenient for her to be sent to the Philippine Training School in Mandaluyong, Manila, (Rizal), it is ordered that the accused be sent to said institution, to be kept there until she reaches the age of majority, all the proceedings in this case being hereby suspended."

The attorney for the appellant alleges that the lower court erred in finding that the accused committed the crime of bigamy, and in ordering her to be sent to the Philippine Training School in Mandaluyong, Rizal.

Appellant's attorney admits that the appellant was twice married as alleged in the information, but contends that she was divorced from her first husband in accordance with Mohammedan religious practices, and that said divorce was valid; that if it be true that said divorce is not in accordance with Act No. 2710 of the Philippine Legislature, the appellant is nevertheless not guilty of bigamy, because she believed that she had been validly divorced and had no criminal intent when she contracted the second marriage.

The Solicitor-General agrees with the attorney for the appellant, and is of the opinion that the divorce was granted in accordance with the precepts of the Koran and Moro customs and traditions; that fraudulent or criminal intent is an essential element of the crime of bigamy, and that since the appellant believed that her first marriage had been legally dissolved because she had been granted a divorce under the Mohammedan laws, she cannot be considered guilty of the crime with which she is charged.

The Solicitor-General further argues that since it is the practice of the Government not to interfere with the customs of the Moros, especially their religious customs, divorces among them granted in accordance with the Koran ought to be recognized as a matter of public policy.

There is little to add to the well considered decision of the trial judge. It seems to us unnecessary to determine

whether or not the divorce in question was granted in accordance with the Mohammedan religious practices, as to which there seems to exist considerable uncertainty, because in our view of the case a valid divorce can be granted only by the courts and for the reasons specified in Act No. 2710. It is not claimed that the appellant was divorced from her first husband in accordance with said Act.

In the case of *Francisco vs. Tayao* (50 Phil., 42), it was held that in the Philippines the causes for divorce are prescribed by statute or Act No. 2710 and that the grounds for divorce are two only: Adultery on the part of the wife or concubinage on the part of the husband.

In the recent decision of *People vs. Bituanan (Moro)*, (56 Phil., 23), where the defendant and a Moro woman were married by a datu according to Moro customs and usages and afterwards divorced by the datu according to the same customs and usages, it was held that the marriage performed according to the rites of the Mohammedan religion was valid, and assumed, for the purpose of that case, that the defendant and his wife were not legally divorced.

Section 25 of the Marriage Law (Act No. 3613) provides that marriages between Mohammedans may be performed in accordance with the rites or practices of their religion, but there is no provision of law which authorizes the granting of divorces in accordance with the rites or practices of their religion.

A divorce cannot be had except in that court upon which the state has conferred jurisdiction, and then only for those causes and with those formalities which the state has by statute prescribed (19 C. J., 19).

It is conceded in all jurisdictions that public policy, good morals, and the interests of society require that the marriage relation should be surrounded with every safeguard and its severance allowed only in the manner prescribed and for the causes specified by law. And the parties can waive nothing essential to the validity of the proceedings (19 C. J., 20).

With respect to the contention that the appellant acted in good faith in contracting the second marriage, believing that she had been validly divorced from her first husband, it is sufficient to say that every one is presumed to know the law, and the fact that one does not know that his act constitutes a violation of the law does not exempt him from the consequences thereof. The case of the *United States vs. Enriquez* (32 Phil., 202), cited by the Solicitor-General is not in point. In that case the defendant left his wife in the municipality of Orion, Province of Bataan, in the year 1895, going to the Province of Laguna as a postal employee. When he returned in 1901, after the revolution, he could not find his wife or obtain the slightest information as to her whereabouts notwithstanding his persistent and diligent search. Believing her to be dead, he contracted a second marriage in Orion on February 1st, 1905. In December, 1913, his first wife made her appearance in Orion. She had been in Manila, Tarlac, and Victoria from 1895 to 1913. The defendant was acquitted on appeal to this court because no fraudulent intent could be charged to him. He believed that his first wife was dead, and that was a well-founded belief, although it was subsequently proved to be erroneous. It was a mistake of fact and not of law.

The decisions of American courts, cited by the Solicitor-General, sustaining the validity of divorces granted to members of Indian tribes according to the customs and usages thereof, are likewise not in point. The various Indian tribes in the United States were dealt with by the Government of the United States as independent nations and treaties were made with them.

As to the suggestion of the Solicitor-General that divorces among the Moros according to their religious practices should be recognized as valid as a matter of public policy, because in the contrary case "there would be no end of criminal prosecutions, for polygamy still abounds among them, and the remarriages of people divorced under the Koran are the order of the day," that is a matter for the consideration of the Legislature and the Governor-General.

The decision appealed from is affirmed, with the costs against the appellant.

Street, Malcolm, Abad Santos, and Butte, JJ., concur.

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