

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN SAN LUIS, DEFENDANT AND APPELLANT.

G.R. No. 4139. February 18, 1908

Ponente: MAPA, J.

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MAPA, J.:

The accused married Justina Aviner Santos in 1891 or 1892. While the latter was still living he contracted another marriage in January, 1907, with Maria Bundoc. These facts are clearly proven in the case, and the accused being found guilty of the crime of illegal marriage was sentenced by the court to the penalty of nine years and one day of imprisonment with hard labor, and to pay the costs of the proceedings.

The only exculpation alleged by the accused is that his first wife had been absent for more than seven successive years, that her whereabouts were not known, and that for said reason he was able to lawfully contract the second marriage in accordance with the provisions of the last paragraph of section 3 of General Orders, No. 68, which reads as follows:

"A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

"1. The former marriage has been annulled or dissolved.

"2. Unless such former husband or wife was absent and not known to such person to be living for the space of seven successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal."

It appears from the evidence that the accused married his first wife in the town of Navotas", and lived with her in the same pueblo for several years. Being pursued by the Guardia Civil for political reasons, probably in 1896 or 1897 (the year is not specifically stated), he absented himself from said pueblo in order to avoid arrest, and did not return until the time he was prosecuted. His wife continued to reside in Navotas and, although she searched for the accused for some time through the provinces, she did not obtain any information as to his whereabouts. It is positively affirmed that in January, 1907, when the accused contracted the second marriage, she still resided at Navotas.

According to the above, it is not true that the wife of the accused had been absent during seven successive years, as affirmed by the defense; the party who was really absent was the accused who since 1896 or 1897 did not return to the town where he resided. His wife remained there where he had left her with the exception of the time she spent in his search. As to the effects of General Orders, No. 68, the absent consort would in this case be the accused, and his wife the consort present. In the sense of the said legal provision, an absent person is one whose whereabouts and existence are not known, because the presumption of death in such cases of absence is necessarily based thereon. The whereabouts of the wife in this case were well known to the accused because she was at the same place where he left her when he parted company with her eleven years ago. She was there when

the accused contracted the second marriage. As it is, there is lacking in the present case the essential condition prescribed in the above-mentioned provision, which consists of the absence of the consort which is presumed or assumed, in accordance with the law, because the existence and whereabouts of the person during seven successive years have remained unknown.

From the foregoing it may be gathered that it would have been extremely easy for the accused to have obtained news regarding his first wife, if he had so desired it. To that end he would have had to do no more than look for her in the same pueblo of Navotas where he left her, and the said pueblo was but a very short distance from Manila where he lived and married for the second time. Under such circumstances he can not in good faith allege, as he pretends in his brief, that during seven successive years he had no news of the whereabouts of his first wife.

And inasmuch as the accused has neither offered any proof that his first wife was generally thought to be dead, and that he so believed at the time of contracting the second marriage, he can not successfully invoke in his favor the legal provision quoted above, under whatever aspect the same is considered.

It may be added that the accused stated to the minister who solemnized his second marriage that he was a bachelor, as attested by one of the eyewitnesses to the ceremony; this fact evinces once more the bad faith with which he acted upon contracting the said second marriage.

The judgment appealed from is hereby affirmed, provided, however, that the imprisonment imposed on the accused shall be without hard labor, for the reason that the Penal Code does not prescribe it in cases of imprisonment even in the case of prision mayor which is the penalty imposed by article 471 of the code applicable in this case, with the costs of this instance against him. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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