

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MORA DUMPO, DEFENDANT AND APPELLANT.*G.R. No. 42581. October 02, 1935*

Ponente: RECTO, J.

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Moro Hassan and Mora Dumpo have been legally married according to the rites and practices of the Mohammedan religion. Without this marriage being dissolved, it is alleged that Dumpo contracted another marriage with Moro Sabdapal after which the two lived together as husband and wife. Dumpo was prosecuted for and convicted of the crime of bigamy in the Court of First Instance of Zamboanga and¹ sentenced to an indeterminate penalty with a maximum of eight years and one day of prison mayor and a minimum of two years, four months and twenty one days of prison correctional, with costs. From this judgment the accused interposed an appeal. The records of the case disclose that it has been established. by the defense, without the prosecution having presented any objection nor evidence to the contrary, that the alleged second marriage of the accused is null and void according to Mohammedan rites on the ground that he!" father had not given his consent thereto.

We formulate no general statement regarding the requisites necessary for the validity of a marriage between Moros according to Mohammedan rites. This is a fact of which no judicial notice may be taken and must be subject to proof in every particular case. In the case at bar we have the uncontradicted testimony of Tahari, an Iman or Mohammedan priest authorized to solemnize marriages between Mohammedans, to the effect that the consent of the bride's father or, in the absence thereof, that of the chief of the tribe to which she belongs is an indispensable requisite for the validity of such contracts. If the absence of this requisite did not make the marriage contract between Mohammedans void, it was easy for the prosecution to show it by refuting Iman Tahari's testimony inasmuch as for lack of one there were two other Imans among the State witnesses in this case. It failed to do so/however, and from such failure we infer that the Iman's testimony for the defense is in accordance with truth. /It is contended that, granting the absolute necessity of the requisite in question, tacit compliance therewith may be presumed because it does not appear that Dumpo's father has signified his opposition to this alleged marriage after he had been informed of its celebration. But this presumption should not be established over the categorical affirmation of Moro Jalmani, Dumpo's father, that he did not give his consent to his daughter's alleged second marriage for the reason that he was not informed thereof and that, at all events, he would not have given it, knowing that Dumpo's first marriage was not dissolved.

It is an essential element of the crime of bigamy that the alleged second marriage, having all the essential requisites, would be valid were it not for the subsistence of the first marriage. It appearing that the marriage alleged to have been contracted by the accused with Sabdapal, her former marriage with Hassan being undissolved, cannot be considered as such, there is no justification to hold her guilty of the crime charged in the information.

Wherefore, reversing the appealed judgment, the accused is acquitted of the charges and if she should be in detention her immediate release is ordered, with the costs of both instances de oficio. So ordered.

Avanceña, C.J., Malcolm, Villa-Real, Abad Santos, and Imperial, JJ., concur.

DISSENTING

HULL, J.,

Under section 25 of the Marriage Law, Act No. 3613, "marriages between Mohammedans may be performed in accordance with the rites or practices of their religion * * *," and as stated in the majority opinion we cannot take judicial notice of such matters but that they are subject to proof, as is any foreign law. The person "learned in the law" who was presented as an expert witness for the defense, did not know his age, but it was estimated by the judge as fifty-four years. He gave his occupation as that of a fisherman and stated he had performed two marriages. He does not know how to read. He was not asked any questions as to whether there was a difference between the marriage of a young woman living with her parents or a woman who had been emancipated.

In the evidence of the prosecution, it was shown that the second marriage was solemnized by an Imam a Mohammedan religious official, seventy years old, who was living in the vicinity of the contracting parties.

There was no quotation from the Koran regarding the essentials of a marriage ceremony according to the Mohammedan religion, and I agree with the trial court that the evidence relied upon by the majority opinion, is not worthy of serious consideration. If consent were in fact necessary, it can well be presumed from the subsequent actions of the father of the girl. She left his house and after the second ceremony lived openly with her second husband, this with her father's full knowledge and at least tacit consent, for many months.

I therefore believe that the sentence appealed from should be affirmed.

VICKERS, J.:

I concur in the dissenting opinion of Justice Hull.

GODDARD, J.;

I also concur in this dissenting opinion.

DIAZ, J.:

I concur in this dissenting opinion of Justice Hull.

Judgment reversed and defendant acquitted.

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