

ROSALIA MARTINEZ, PLAINTIFF AND APPELLANT, VS. ANGEL TAN, DEFENDANT AND APPELLEE.

G.R. No. 4904. February 05, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

The only question in this case is whether or not the plaintiff and the defendant were married on the 25th day of September, 1907, before the justice of the peace, Jose Ballori, in the town of Palompon in the Province of Leyte.

There was received in evidence at the trial what is called an expediente de matrimonio civil. It is written in Spanish and consists, first, of a petition directed to the justice of the peace, dated on the 25th of September, 1907, signed by the plaintiff and the defendant, in which they state that they have mutually agreed to enter into a contract of marriage before the justice of the peace, and ask that the justice solemnize the marriage. Following this is a document dated on the same day, signed by the justice of the peace, by the plaintiff, by the defendant, and by Zacarias Esmero and Pacita Ballori. It states the presentation of the petition above mentioned; that the persons who signed it were actually present in the office of the justice on the day named; that they ratified under oath the contents of the petition, and that they insisted in what they had there asked for. It also stated that being required to produce witnesses of the marriage, they presented Zacarias Esmero as a witness for the husband and Pacita Ballori as a witness for the wife. Following this is a certificate of marriage signed by the justice of the peace and the witnesses Zacarias Esmero and Pacita Ballori, dated the 25th day of September 1907, in which it is stated that the plaintiff and the defendant were legally married by the justice of the peace in the presence of the witnesses on that day.

The court below decided the case in favor of the defendant, holding that the parties were legally married on the day named. The evidence in support of that decision is: First. The document itself, which the plaintiff admits that she signed. Second. The evidence of the defendant, who testifies that he and the plaintiff appeared before the justice of the peace at the time named, together with the witnesses Zacarias Esmero and Pacita Ballori, and that they all signed the document above mentioned. Third. The evidence of Zacarias Esmero, one of the above-named witnesses, who testifies that the plaintiff, the defendant, and Pacita Ballori appeared before the justice at the time named and did sign the document referred to. Fourth. The evidence of Pacita Ballori, who testified to the same effect. Fifth. The evidence of Jose Santiago, the bailiff of the court of the justice of the peace, who testified that the plaintiff, the defendant, the two witnesses above-named, and the justice of the peace were all present in the office of the justice of the peace at the time mentioned.

The only direct evidence in favor of the plaintiff is her own testimony that she never appeared before the justice of the peace and never was married to the defendant. She admits that she signed the document in question, but says that she signed it in her own home, without reading it, and at the request of the defendant, who told her that it was a paper authorizing him to ask the consent of her parents to the marriage.

There is some indirect evidence which the plaintiff claims supports her case, but which we think, when properly

considered, is not entitled to much weight. The plaintiff at the time was visiting, in the town of Palompon, her married brother and was there for about two weeks. The wife of her brother, Rosario Bayot, testified that the plaintiff never left the house except in her company. But she admitted on cross-examination that she herself went to school every morning and that on one occasion the plaintiff had gone to church unaccompanied. The testimony of this witness loses its force when the testimony of Pacita Ballori is considered. She says that at the request of the defendant on the day named, about 5 o'clock in the afternoon, she went to the store of a Chinese named Veles; that there she met the plaintiff and her mother; that she asked the mother of the plaintiff to allow the plaintiff to accompany her, the witness, to her own house for the purpose of examining some dress patterns; that the mother gave her consent and the two girls left the store, but instead of going to the house of the witness they went directly to the office of the justice of the peace where the ceremony took place; that after the ceremony had taken place, one came advising them that the mother was approaching, and that they thereupon hurriedly left the office of the justice and went to the house of Pacita Ballori, where the mother later found them.

The other testimony of the plaintiff relating to certain statements made by the justice of the peace, who died after the ceremony was performed and before the trial, and certain statements made by Pacita Ballori, is not sufficient to overcome the positive testimony of the witnesses for the defendant.

The testimony of Pacita Ballori is severely criticised by counsel for the appellant in his brief. It appears that during her first examination she was seized with an hysterical attack and practically collapsed at the trial. Her examination was adjourned to a future day and was completed in her house where she was sick in bed. It is claimed by counsel that her collapse was due to the fact that she recognized that she testified falsely in stating that the office of the justice of the peace was at the time in the municipal building, when, in fact, it was in a private house. We do not think that the record justifies the claim of the appellant. The statement as to the location of the office of the justice of the peace was afterwards corrected by the witness and we are satisfied that she told the facts substantially as they occurred.

There is, moreover, in the case written evidence which satisfies us that the plaintiff was not telling the truth when she said she did not appear before the justice of the peace. This evidence consists of eight letters, which the defendant claims were all written by the plaintiff. The plaintiff admits that she wrote letters numbered 2 and 9. The authenticity of the others was proven. No. 9 is as follows:

"ANGEL: Up to this time I did not see my father; but I know that he is very angry and if he be informed that we have been married civilly, I am sure that he will turn me out of the house.

"Do what you may deem convenient, as I don't know what to do.

"Should I be able to go tomorrow to Merida, I shall do so, because I can not remain here.

"Yours, ROSAL."

Letter No. 6, which bears no date, but which undoubtedly was written on the morning of the 25th of September, is as follows:

"Sr. D. ANGEL TAN.

"ANGEL : It, is impossible for me to go to the house of Veles this morning because my sister-in-law will not let me go there; if it suits you, I believe that this afternoon, about 5 or 6 o'clock, is the best hour.

"Arrange everything, as I shall go there only for the purpose of signing, and have Pacita wait for me at the Chinese store, because I don't like to go without Pacita.

"The house must be one belonging to prudent people, and no one should know anything about it.

"Yours, ROSAL. "

It will be noticed that this corroborates completely the testimony of Pacita Ballori as to her meeting the plaintiff in the afternoon at the store of the Chinese, Veles. Letter No. 7 is also undated, but was evidently written after the marriage before the justice of the peace. It is as follows:

"Sr. D. ANGEL TAN.

"ANGEL: If you want to speak to my mother, who is also yours, come here by and by, at about 9 or 10, when you see that the tide is high because my brother will have to go to the boat for the purpose of loading lumber.

"Don't tell her that we have been civilly married, but tell her at first that you are willing to celebrate the marriage at this time, because I don't like her to know to-day that we have been at the court-house, inasmuch as she told me this morning that she heard that we would go to the court, and that we must not cause her to be ashamed, and that if I insist on being married I must do it right.

"Tell her also that you have asked me to marry you.

"I send you herewith the letter of your brother, in order that you may do what he wishes.

"Yours, ROSAL."

Letter No. 8 was also evidently written after the marriage and is in part as follows:

"Sr. D. ANGEL TAN.

"Angel: I believe it is better for you to go to Ormoc on Sunday on the steamer Rosa, for the purpose of asking my father's permission for our marriage, and in case he fails to give it, then we shall do what we deem proper, and, if he does not wish us to marry without his permission, you must request his consent.

"Tell me who said that my sister-in-law knows that we are civilly married; my brother's ill treatment is a matter of no importance, as every thing may be carried out, with patience."

It was proven at the trial that the defendant did go to Ormoc on the steamer Rosa as indicated in this letter, and that the plaintiff was on the same boat. The plaintiff testified, however, that she had no communication with the defendant during the voyage. The plaintiff and the defendant never lived together as husband and wife, and upon her arrival in Ormoc, after consulting with her family, she went to Cebu and commenced this action, which was brought for the purpose of procuring the cancellation of the certificate of marriage and for damages. The evidence strongly preponderates in favor of the decision of the court below to the effect that the plaintiff appeared before the justice of the peace at the time named.

It is claimed by the plaintiff that what took place before the justice of the peace, even admitting all that the witnesses for the defendant testified to, did not constitute a legal marriage. General Orders, No. 68, section 6, is as follows:

"No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife,"

Zacarias Esmero, one of the witnesses, testified that upon the occasion in question the justice of the peace said nothing until after the document was signed and then addressing himself to the plaintiff and the defendant said, "You are married." The petition signed by the plaintiff and defendant contained a positive statement that they had mutually agreed to be married and they asked the justice of the peace to solemnize the marriage. The document signed by the plaintiff, the defendant, and the justice of the peace, stated that they ratified under oath, before the justice, the contents of the petition and that witnesses of the marriage were produced. A marriage took place as

shown by the certificate of the justice of the peace, signed by both contracting parties, which certificate gives rise to the presumption that the officer authorized the marriage in due form, the parties before the justice of the peace declaring that they took each other as husband and wife, unless the contrary is proved, such presumption being corroborated in this case by the admission of the woman to the effect that she had contracted the marriage certified to in the document signed by her, which admission can only mean that the parties mutually agreed to unite in marriage when they appeared and signed the said document which so states before the justice of the peace who authorized the same. It was proven that both the plaintiff and the defendant were able to read and write the Spanish language, and that they knew the contents of the document which they signed; and under the circumstances in this particular case we are satisfied, and so hold, that what took place before the justice of the peace on this occasion amounted to a legal marriage.

The defendant's original answer was a general denial of the allegations contained in the complaint. Among these allegations was a statement that the parties had agreed to be married on condition that the defendant obtain previously the consent of the plaintiff's parents.

The defendant was afterwards allowed to amend his answer so that it was a denial of all the allegations of the complaint except that relating to the condition in regard to the consent of the parents. The plaintiff objected to the allowance of this amendment. After the trial had commenced the defendant was again allowed to amend his answer so that it should be an admission of paragraphs 2 and 3 of the complaint, except that part which related to the consent of the parents. It will be seen that this second amendment destroyed completely the first amendment and the defendant's lawyer stated that what he had alleged in his second amendment was what he intended to allege in his first amendment, but by reason of the haste with which the first amendment was drawn he had unintentionally made it exactly the opposite of what he had intended to state. After argument the court allowed the second amendment. We are satisfied that in this allowance there was no abuse of discretion and we do not see how the plaintiff was in any way prejudiced. She proceeded with the trial of the case without asking for a continuance.

The judgment of the court below acquitting the defendant of the complaint is affirmed, with the costs of this instance against the appellant

Arellano, C J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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