

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. IRINEO A. SAN JOSE, DEFENDANT AND APPELLANT.

G. R. No. 4980. January 10, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

On the 6th of December, 1903, Irineo San Jose contracted canonical marriage in Manila with Lorenza de los Santos, and on January 1, 1908, while Lorenza Santos was and is still living, he contracted a civil marriage in Tayabas with Paz Buenaventura. These facts have been established even by the testimony of the accused himself.

The whole defense rests in that the accused was married the second time under the belief that his first wife, Lorenza Santos, had died in 1905, while he was in Hongkong.

The Court of First Instance of Tayabas, in which the defendant was tried, sentenced him to eight years and one day of prision mayor with the accessory penalties and costs. From this judgment the accused has appealed to this court.

Under the provisions of article 471 of the Penal Code, which punishes with prision mayor whomsoever shall contract a second marriage without the former one having been lawfully dissolved, the penalty imposed is in accordance with the law.

That the defendant had no intent to commit the crime is the defense interposed by the accused in alleging that he contracted the second marriage in the belief that Lorenza de los Santos, his first wife, was dead; but this defense, which it was his duty to prove, has in no wise been established. All that he states is that while he was in Hongkong the grandfather of Lorenza de los Santos, her guardian and the father of the accused, wrote to him in November, 1905, informing him of her death; but not one of these letters or persons was offered in evidence to prove such allegation. The only witness who testified to anything of this kind is a painter who, according to his own testimony was not an intimate friend of the accused, and yet, for the only reason that he says he painted defendant's house in 1903, he received a letter from the accused requesting him to ascertain the whereabouts of Lorenza de los Santos, and, having obtained from her grandfather the information that she was dead, he communicated it to the father of the accused. The following is the testimony of the accused:

"One or two weeks after I had received from Lorenza de los Santos her letter of the 24th of September, 1905 (Exhibit No. 3), her guardian, her grandfather, and my father wrote me at once. I then replied requesting my father to give more details of the death and of everything connected with the matter. At the same time I wrote a letter to Pedro Gabriel asking him to investigate the matter."

Pedro Gabriel testified that in 1903 he had painted the house of the accused in Calle Folgueras (the house of Lorenza de los Santos, according to the accused), but that he did not call to see if the person he was looking for was there.

"Q. And did you learn about Lorenza in that house? - A. No, sir, I was only asked in the letter to ascertain her

whereabouts.

"Q. Do you mean to say that she was lost? - A. I don't know the reason.

"Q. Will you repeat here what he stated to you in his letter? - A. He said that he begged me as a favor to ascertain the whereabouts of his wife.

"This man - the trial judge says - whose declaration is not at all reasonable, showed by his manner when testifying, by his embarrassment and confusion, that he was not declaring the truth, but was simply repeating what he was taught to say."

In order to prove that the second marriage was lawfully contracted, the accused ought to have shown, according to section 3 of General Orders, No. 68, that his first wife had been absent for seven consecutive years up to the time he was married a second time, without his knowing that she was living, or that she was generally believed to be dead, as he also believed, at the time of the second marriage. The record, however, does not contain the least evidence as to the general belief of the death of his first wife, or of the reason for his personal belief with respect to the dissolution, for such reason, of the first matrimonial bond by which he was united to said woman.

The witness Florentino Natividad saw Lorenza de los Santos continuously from the year 1904, when he was introduced to her by her husband, the accused, and also during the following years until 1908, when the accused was arrested.

In this instance the defense assigned as error in the judgment the fact that article 471, instead of article 440 of the Penal Code, was applied.

Article 440 is one of those in chapter 3, title 9 of book 2 of the Penal Code, under the heading of "Crimes of public scandal." The defense pretends that the crime should be classified as of public scandal, and not as illegal marriage. The said article 440 reads as follows:

"He who, being united by an indissoluble religious marriage, should abandon his spouse and contract a new marriage with another person, or vice versa, even though the latter should not be indissoluble, shall incur the penalty of *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree and public censure."

In order to understand how, prior to the promulgation of General Orders, No. 68, cited above, the crime of public scandal, punished by article 440, differed from that of illegal marriage, defined by article 471, the historical antecedents of the provision of law should be recalled; it was a new one in the Penal Code of Spain of 1870, as it was not contained in the code of 1850, and was modified when transferred to the Penal Code of the Philippines.

In Spain, prior to the passage of the law of the 18th of June, 1870, no marriage other than the religious or canonical was recognized as producing juridical and civil effects. Since the enactment of the code, civil marriage was established, and it was the only one producing civil effects. In the judgment of the lawmaker it seemed just that a punishment should be established for "he who, being united by an indissoluble canonical marriage, should abandon his spouse and contract a new marriage according to the civil law with another person, or vice versa, even though the religious marriage that he should newly contract were not indissoluble."

When the Penal Code was promulgated in the Philippines, no marriage other than the religious or canonical was recognized as producing juridical and civil effects. Of the law of the 18th of June, 1870, only chapter 5 on the general effects of marriage, but not the civil marriage itself, which was the main object thereof, was applied to the Philippines. There was therefore no reason to insert in the Penal Code for the Philippines an article similar to that inserted in the code of Spain, in the revision of 1870, a revision brought about through the efforts of the same cabinet minister who countersigned the amendment of June 18, 1870, on the civil marriage.

It may therefore be said that, in the Philippines, there did not exist the same reason that existed in Spain to establish a penalty for an act classified merely as public scandal, as applied to a person who, being married canonically, should again marry civilly, or vice versa, inasmuch as, during the former sovereignty, it was not possible to contract marriage except in the religious or canonical form, which was the only one acknowledged and authorized by the law; and while several forms of marriage are recognized under the present sovereignty, civil effects are produced by all of them. So that neither at the present time is there any reason for the punishment of a crime having merely the character of a public scandal, in so far as it does not interfere with the /status of the family, or with family rights, for the reason that only one of the marriages could have produced any legal effect, according to said law of the 18th of June, 1870. Now, as well as formerly, whoever marries in the Philippines without his or her previous marriage having been dissolved, interferes with the status and the family rights created by the first one, and can not be punished otherwise than for bigamy upon contracting a second marriage.

Inasmuch as the judgment appealed from is in accordance with the law and the merits of the case, it is hereby affirmed with the costs of this instance against the appellant, and it is so ordered.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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