

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PLATON IBAÑEZ, DEFENDANT AND APPELLANT.*G.R. No. 5184. August 17, 1909*

Ponente: TORRES, J.

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On the 8th of May, 1893, according to the marriage certificate which appears at folio 8, Platon Ibañez contracted a religious marriage with Maria Lopez in the parish church of the pueblo of Hagonoy, Bulacan, and while the said Maria Lopez was still living, the said Platon Ibañez, on the 9th of January, 1907, contracted a further marriage with Vivencia B. Casiano, before a pastor or Protestant minister in the city of Manila, according to a certificate issued by the justice of the peace of this city on June 19, 1908, appearing at folio 9.

From the time they were married Platon Ibañez and his wife, Maria Lopez, lived together for nearly five years and had two children, one of whom died, while the other is still living and is now nearly 12 years old. When the woman separated from her husband on account of the ill-treatment which, according to her statement, she received at his hands after the birth of her second child, she went to live with her parents in the said pueblo of Hagonoy, while the husband removed to Bulacan, and later on to Manila, where he has resided ever since; but from the time of his second marriage, Platon Ibañez and Vivencia B. Casiano have been living together.

In view of the above an assistant prosecuting attorney filed a complaint on the 25th of July, 1908, against the said Ibañez, charging him with the crime of contracting an illegal marriage on the 9th of January, 1907, while his wife, Maria Lopez, was still living, and without his first marriage having been lawfully dissolved. The corresponding proceedings having been instituted, the court below rendered judgment on the 1st of September, 1908, sentencing the accused to the penalty of eight years and six months of presidio mayor, and the payment of the costs of the proceedings, from which judgment the representative of the accused has appealed to this court.

From the above facts it appears to have been fully proven that Platon Ibañez has committed the crime of illegal marriage. Inasmuch as while his lawful wife, Maria Lopez, was still living in the pueblo of Hagonoy, Province of Bulacan, where she and the accused, Platon Ibañez, resided together for nearly five years, between the time when they were married in accordance with the ecclesiastical and civil laws on the 8th of May, 1893, and the time when the husband abandoned his wife and went to live first in Bulacan and subsequently in the city of Manila, where he again contracted marriage on the 9th of January, 1907, with Vivencia B. Casiano before a Protestant minister, without using due and necessary diligence in order to ascertain with certainty whether his lawful wife, Maria Lopez, was still living or was dead, as he claims in his defense, it is not proper to consider that he acted in good faith when marrying a second time.

Article 471 of the Penal Code provides as follows:

"Any person who shall contract a second or subsequent marriage without the prior marriage being lawfully dissolved shall be punished with the penalty of prision mayor."

The impediment termed "ligamen" in law prohibits a married man or woman from contracting another bond of union as long as the consort is alive; a violation of the prohibitive law against contracting a second or subsequent marriage without the prior one being dissolved constitutes the crime of bigamy, which consists in the contracting, on the part of a married person with fraudulent intent and bad faith, of a new marriage while a lawful spouse is living.

The two certificates exhibited, marked "A" and "B," are authentic and indisputable; they prove the respective and successive celebrations of the two marriages contracted by the accused with two different women. Certificate marked "B" of the marriage contracted with Vivencia B. Casiano appears as having been issued by the justice of the peace of this city in connection with the register of marriage certificates kept in said court; and document marked "A" consists of a certificate of the record of the marriage copied from the church records kept in the parish church of the pueblo of Hagonoy and signed by the curate thereof.

It is proper to state herein that parish priests continue to be the legal custodians of the parish records kept under the laws enforced during the former sovereignty, and are authorized to issue true copies, in the form of certificates, of the entries contained in said books. The latter, for the purpose of proving the acts to which they refer, have not lost the character of public documents which they possessed under the former laws. (U. S. vs. Arceo, 11 Phil. Rep., 530.)

The accused pleaded not guilty, but notwithstanding his exculpatory allegations unsupported by even circumstantial evidence, the record in the case furnishes incriminating data and sufficient merits to fully establish the conviction of his guilt as the proven responsible author of said crime, as it has not been shown that he contracted the second marriage in good faith. This case does not refer to a spouse who was absent for many years, but to a wife whom, on the statement of a third party, the accused believed to be already dead. In order to be sure he should have communicated with the relatives of the woman reported dead, and the parish priest and municipal secretary, who keep a record of the burials that take place in the pueblo, but as these things were not done, his allegation of good faith can not be accepted.

If it were true that the accused tried to ascertain the whereabouts of his wife, Maria Lopez, in the pueblo of Hagonoy where she now resides, well known and reputed among its inhabitants as an honest woman, according to the declaration of the parish priest thereof, it is impossible to believe, in the natural order of things, that, had he employed the most common and ordinary diligence, he could have remained ignorant of her whereabouts as well as that of his child; he did not do this, and preferred to incur the penalty that the penal law imposes on persons guilty of the crime of bigamy.

It has further been shown from the statements of his condition as given in his cedula for 1905 and 1906 that Platon Ibañez's second marriage was a guilty one and that he was aware that his lawful wife was still living; in the first one he appears as a widower, while in the second he appears as single. (Exhibits 1 and 2.) Such changes indicate bad faith on the part of the holder of said cedulas, as it is impossible to admit the explanation given by the accused, attributing the error to the clerk who made out the said document. It is impossible to understand how, if in his 1905 cedula he figured as a widower, he could appear as single in his cedula of 1906, unless it was done at his request or upon his indication, and, as there is no evidence to the contrary, it must be accepted as true that in 1905 he procured a widower's cedula but in the following year had himself appear as a bachelor, for had he given no instructions, his cedula for 1906 would have contained the same statement as that of the previous year.

On the other hand, there is no question but that, under the provisions of General Orders, No. 68, the second marriage contracted by the accused was illegal and null. The first marriage contracted in 1893 had not been dissolved or annulled, inasmuch as his first wife was then, and is still living, and the accused did not come within

the exception expressly indicated in the said general orders by the positive absence of his lawful wife, Maria Lopez.

In view of the above, and inasmuch as no mitigating nor aggravating circumstance is present in the commission of the crime, and in the absence of proof as to the amount or importance of the damages occasioned to the woman who married in good faith, and considering that the judgment appealed from is in accordance with the law and the merits of the case, it is our opinion that the same should be and is hereby affirmed; provided, however, that the penalty imposed shall be prision mayor with costs; and provided further, that the right to claim an indemnity in accordance with the provisions of article 480 of the code shall be reserved to the woman Vivencia B. Casiano. So ordered.

Arellano, C. J., Johnson, Carson, and Moreland JJ., concur.

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