

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS, DOROTEO GAOIRAN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5982. November 27, 1910

Ponente: TRENT, J.

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TRENT, J.:

The appellants in this case, Doroteo Gaoiran, Juan Balicat, and Gerarda Sahagun, were charged in the Court of First Instance of the Province of Ilocos Norte with having violated the provisions of article 471 of the Penal Code, the first as principal and the other two as accomplices. They were tried, found guilty as charged, and Doroteo Gaoiran was sentenced to eight, years and one day of prision mayor, with the corresponding accessories, and the other two appellants, Juan Balicat and Gerarda Sahagun, were sentenced to two years four months and one day of prision correccional, as accomplices, together with the corresponding accessories. They appealed and now insist, first, that the trial court erred in permitting the case to continue for the reason that the prosecution did not present its proofs until after the defense had rested its case; and, second, that the trial court erred in finding that the appellants knew the whereabouts and the existence of Salvadora Batara.

The first assignment of error is based on the fact that the defense presented its proofs before the prosecution presented its case. It appears from the record that after the appellants entered their plea of not guilty the fiscal did not then present his proofs and the appellants proceeded to present theirs. The reason that the fiscal did not present his proofs at that time is because of the fact that the appellants in their plea of not guilty admitted that Dorotea Gaoiran had contracted the second marriage, as alleged in the complaint, and that the other two appellants were witnesses to the second marriage, reserving their right to present proofs to establish the fact that they did not know that Salvadora Batara, Doroteo's first wife, was living when he contracted his second marriage. It further appears in the record that this procedure was adopted without objection on the part of the appellants or their counsel. No objection having been entered during the trial of this cause in the court below with reference to this procedure in the presentation of proofs, and it appearing that that procedure has not prejudiced the substantial rights of the appellants in this case, the first assignment of error must be held to be without foundation.

The second assignment of error involves a question of fact. Doroteo Gaoiran admits that he was lawfully married to Salvadora Batara on the 24th of May, 1897, He also admits that he was legally married on the 23d of May, 1908, to Maria Manuel. The other two appellants admitted that they were present and witnessed this last marriage, knowing that Doroteo Gaoiran had been previously married to Salvadora Batara.

The appellants testified that when Doroteo Gaoiran contracted this second marriage Salvadora Batara had been absent for more than eight years without their knowing anything of her whereabouts, notwithstanding that they had made diligent inquiry to ascertain whether or not Salvadora was then living. This defense has not, by any means, been established. As a matter of fact all of these parties lived in the same barrio and within a few hundred brazas of each other from the time Doroteo Gaoiran married Salvadora Batara up to the time he contracted the second marriage. Salvadora Batara lived during the greater part of this time with her mother in that barrio. These facts have not only been established by the testimony of credible witnesses who knew all the parties and who

lived in that same locality, but also by two baptismal certificates which show that Salvadora Batara gave birth to two children, the first in 1902 and the second in 1904, and that these two children were baptized in the same town where these parties lived. Doroteo Gaoiran and Salvadora Batara only lived together a very short time after they were married. Salvadora Batara since her marriage with Doroteo has lived at least a part of the time with another man; in fact some other man, aside from Doroteo Gaoiran, is the father of these two children. The real reason why Doroteo contracted this second marriage was on account of his first wife living with another man and having children by him. This is not a sufficient reason for relieving him of the criminal responsibility of the second marriage. He contracted this second marriage in express violation of law, knowing that his first wife was still living and knowing that his marriage to Salvadora Batara had never been legally dissolved.

"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." (Art. 471, Penal Code.) (U. S. vs. Orosa, 7 Phil. Rep., 247; U. S. vs. Macleod, 3 Phil. Rep., 510; U. S. vs. San Luis, 10 Phil. Rep., 163.)

In the commission of this crime by Doroteo Gaoiran no aggravating circumstances were present; but we think that he should be given the benefit of the extenuating circumstance provided for in article 11 of the Penal Code.

The judgment appealed from, with reference to Doroteo Gaoiran, is, therefore, affirmed: Provided, however, That the penalty be reduced to six years and one day of prision mayor, he to pay one-third of the costs of this case.

With reference to the other two appellants, while it is admitted that they were present when Doroteo Gaoiran contracted his second marriage and that they knew that he had been previously married to Salvadora Batara, and while it has been established that they knew that Salvadora Batara was living when this second marriage was contracted, the certificate of the justice of the peace fails to show just what part was taken by these two appellants in this marriage. The justice of the peace said that these two appellants were witnesses *presenciales* (actually present), but he did not state that these two parties testified, or even stated before him, that there existed no impediment which might prevent this marriage, and the proofs failed to establish this fact; so the most that can be said as to the participation on the part of these two appellants in the second marriage is that they were eyewitnesses or persons who were present when the marriage took place. These facts are not sufficient to establish the guilt of these two appellants as accomplices in the commission of this crime. They are, therefore, acquitted, with two-thirds of the costs *de oficio*. So ordered.

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

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