

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DIONISIO LOMONGSOD ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6858. February 15, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with the crime of illegal marriage, alleged to have been committed as follows:

"On or about June 10, 1910, in the municipality of Opon of this province and judicial district, the accused Inez Ompad, a girl 15 years of age, and the accused Dionisio Lomongsod, who knew the age of the said Inez Ompad, did without the knowledge or consent of her parents, contract civil marriage before the justice of the peace of said municipality; the accused Patricia Godinez, Fructuoso Godinez, and Tito Godinez did maliciously, intentionally, and criminally testify under oath, before the justice of the peace, that the accused Inez Ompad was 18 years old on the day when her marriage ceremony was performed with her coaccused Dionisio Lomongsod, when they well knew that she was not so old; all in violation of law."

During the trial of the cause and at the close of the proof presented by the prosecuting attorney, the lower court found that the evidence was insufficient to support the charges against the defendants, Tito Godinez, Patricia Godinez, and Fructuoso Godinez, and dismissed the complaint against them and discharged them from the custody of the law, with three-fifths of the costs de oficio.

At the close of the trial the Honorable Adolph Wislizenus, judge, found that the defendants Dionisio Lomongsod and Inez Ompad were guilty of the crime charged in the complaint and sentenced them for a violation of article 475 of the Penal Code, giving them the benefit of article 11 of said code, to be imprisoned for a period of six months and one day of prision correccional, and each to pay one-fifth part of the costs.

From that sentence the defendants appealed and made several assignments of error in this court.

The complaint charges that upon the 10th day of June, 1910, in the municipality of Opon, Province of Cebu, the defendant Inez Ompad being 15 years of age, and the defendant Dionisio Lomongsod, were married before a justice of the peace, without the consent or knowledge of the parents of the said Inez Ompad. The marriage was celebrated on the date mentioned. The record shows that Inez Ompad was 16 years of age on the date of the marriage and that Dionisio Lomongsod was 18 years of age on such date.

The basis of the prosecution is that such marriage took place without the consent or knowledge of the parents of Inez Ompad and was therefore illegal.

Examining the proof adduced during the trial of the cause, we find no proof whatever that the said marriage took place without the consent of the parents of the said Inez Ompad. Her father, for some reason or other, did not appear at the trial of the cause. The fiscal, during the trial, assumed to speak for the father of the said Inez Ompad, and stated that if her father were present he would testify that the marriage took place without his consent. This statement of the fiscal, however, can not be considered as proof in the cause. There is, therefore, no evidence in

the record which shows that the defendants herein violated the provisions of article 475 of the Penal Code. The judgment of the lower court must, therefore, be reversed.

Attention is called to the decisions of this court in the cases of *Aguila vs. Lazaro* (4 Phil. Rep., 735) and *Lerma vs. Mamaril* (9 Phil. Rep., 119), in which we discussed the provisions of General Orders No. 68. In said decisions this court arrived at the conclusion that under the provisions of General Orders No. 68, the marriage of a man over 14 years of age to a woman over 12 years of age is valid and can not be declared to be a nullity, because the consent of the parents was not obtained.

For the reason that the record contains no evidence that the said marriage took place without the consent of the parents, the sentence of the lower court is hereby reversed the complaint is ordered to be dismissed and the defendants discharged from the custody of the law, with costs de oficio.

Arellano, C. J., Torres, Mapa, Carson, Moreland, and Trent, JJ., concur.

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