

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MACARIO BIASBAS, DEFENDANT AND APPELLANT.

G.R. No. 8381. August 14, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of bigamy. The complaint alleged:

"That on or about Saturday, November 4, 1911, in the court of the justice of the peace of the municipality of Santo Tomas, Batangas, and within the jurisdiction of the Court of First Instance, the defendant maliciously and criminally married Agustina Ramos, notwithstanding the fact that his previous marriage with Juliana Rodriguez in the municipality of Dagupan, Province of Pangasinan, had not been dissolved. Contrary to law and in violation of article 471 of the Penal Code.'

After hearing the evidence, the Honorable Isidro Paredes, judge, found that the defendant was guilty of the crime charged in the complaint and sentenced him to be imprisoned for a period of eight years and one day of prison mayor, with the accessory penalties of the law, and to pay the costs, reserving to each of the wives of the defendant the right to commence an action to annul said marriages. From that sentence the defendant appealed to this court, and made the following assignments of error:

"I. The court erred in not finding in the accused's favor the exemption from responsibility provided in section 3 of General Orders, No. 68.

"II. The court erred in declaring in its judgment that more than six years had not elapsed from October 14, 1904, to November 4, 1911."

With reference to the first assignment of error, it may be said that section 3 of General Orders, No. 68, provides that:

"A subsequent marriage contracted by any person during the life of the former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

"1. The former marriage has been annulled or dissolved; and

"2. Unless such former husband or wife was absent and not known to such person to be living for the space of seven successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead, at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid, until its nullity is adjudged by a competent tribunal."

The evidence shows that the defendant was a practicante in the Philippine Constabulary at the time of the second marriage; that on the 14th day of May, 1904, he was legally married to one Juliana Rodriguez; that on the 4th day of November, 1911, he was married to Agustina Ramos. The evidence further shows that about six months after his first marriage (in the month of October or November, 1904) he and his first wife separated; that he went to the Province of Benguet and worked on the Benguet wagon road, and continued in the Province of Benguet until the

month of October, 1910; that he did not hear from his first wife while he was in the Province of Benguet; that he wrote to his parents, who lived in the pueblo of Pozorrubio, concerning the whereabouts of his wife and that they answered him that she had left their house about two months after he and his wife had separated (or in the month of December, 1904, or January, 1905).

The defendant came to Manila and was employed in the Bureau of Navigation in the month of October, 1910. He says that he made frequent inquiries concerning the whereabouts of his wife and that he was not able to secure any information concerning her. After leaving the employment of the Bureau of Navigation, he became a practicante in the Philippine Constabulary and was located in the Province of Batangas at the time he met his second wife, whom he married on the 4th day of November, 1911.

While the defendant testified that he had made inquiries concerning the whereabouts of his wife, he fails to state of whom he made such inquiries. He did not even write to the parents of his first wife, who lived in the Province of Pampanga, for the purpose of securing information concerning her or her whereabouts. He admits that he had a suspicion only that his first wife was dead. He admits that the only basis of his suspicion was the fact that she had been absent. That she was not dead was proven by the fact that she appeared as a witness in the trial against him. It does not appear from the record, from the investigation which he made concerning the existence of his first wife, that he had any fact or facts upon which he could, in good faith, base the belief that she was dead. She testified that some time after the defendant left her at Pozorrubio, in the month of October or November, 1904, she came to the city of Manila, in order to secure a livelihood, and that, except for the times she visited in the Provinces of Pampanga and Tarlac, she remained in the city of Manila thereafter. The fact that he failed to make inquiry of the parents of his first wife concerning her whereabouts fully justifies, in our opinion, the conclusion of the lower court that he had not reached the conclusion that his first wife was dead, after a proper investigation, in good faith. He also testified that on one occasion he had been told that his wife was in the Provinces of Pampanga or Tarlac. It will be remembered that he left his wife; she did not leave him until after he had been absent for a period of more than six months.

We said in the case of *United States vs. Juan San Luis* (10 Phil. Rep., 163), that one who contracts a second marriage while his first wife is living, except in the event of a bona fide absence of the first wife for a period of seven years and whose whereabouts are unknown, or cannot with due diligence be ascertained, is guilty of illegal marriage, as defined in section 3 of General Orders, No. 68.

Our conclusions are:

- That the defendant had not exercised due diligence to ascertain the whereabouts of his first wife.
- Even though admitting that he had made diligent search concerning her whereabouts, she had not been absent for a period of seven years before the second marriage took place. It will be remembered that he left his wife in the month of October or November, 1904, and that he received information from his parents that she had remained with them for a period of two months after he had gone away. He knew, therefore, her whereabouts certainly up to the month of December, 1904, or January, 1905. Counting then from the month of December, 1904, until the 4th of November, 1911, the time of the second marriage, it will be seen that seven successive years immediately preceding said marriage had not elapsed.

We believe that what has been said with reference to the first assignment of error answers also the second.

The Attorney-General, in a carefully prepared brief, recommends that the sentence of the lower court be affirmed.

After a careful examination of the evidence, we find that the same shows, beyond a reasonable doubt, that the defendant is guilty of the crime charged in the complaint. The sentence of the lower court is therefore hereby

affirmed, with costs.

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

MORELAND, J.:

I concur in the result.

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