

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOMINGO SAN JUAN, DEFENDANT AND APPELLANT.

G.R. No. 8502. October 10, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Manila, convicting the accused of performing a marriage ceremony where one of the contracting parties was under the age of consent, and sentencing him to suffer the penalty of four years of suspension from practicing his profession as a minister of the National Evangelical Church of the Philippines, to pay a fine of 1,500 pesetas and one-fifth of the costs.

The information was originally filed against the spouses, the two witnesses to the marriage, and the minister performing the ceremony. At the request of the prosecuting attorney the case was dismissed with respect to the defendant Antonio de la Liana, one of the witnesses to the marriage, in order that he might be used as a witness for the Government, under the provisions of section 34 of the Code of Criminal Procedure. With respect to the defendants, Florencio San Miguel and Eulogia Dizon, the spouses, and Teofilo San Miguel, the other witness to the marriage, the case was also dismissed, under paragraph 2 of article 475 of the Penal Code, for the reason that Esteban Dizon, the father of Eulogia Dizon, the bride, having, subsequent to the ceremony, given his consent to the marriage. The only defendant remaining, therefore, is Domingo San Juan, the minister who performed the ceremony.

General Orders, No. 68, section 7 (as amended by Act No. 1451), reads as follows:

"Sec. VII. The person solemnizing a marriage must make and sign a certificate showing:

"1. The real and full names of the parties and their places of residence.

"2. Their ages.

"3. The consent of the father, mother, or guardian, or of one having the charge of such person, if any such be given, if the male be under the age of twenty years or the female be under the age of eighteen years. For the purpose of ascertaining these facts, the person solemnizing the marriage is authorized to examine parties and witnesses on oath and receive affidavits, and he must state such facts in his certificate. The marriage shall not be performed in case of nonage, unless the consent hereinbefore required shall be personally given by the parent or guardian or person having charge of the infant, or certified in writing over his or her signature, attested by two or more subscribing witnesses and proved by the oath of one of them."

There is no penalty in the General Orders attached to the solemnization of a marriage between persons under age. The prosecution must be sustained, therefore, if at all, under the Penal Code in connection with said General Orders.

Article 479 of the Penal Code reads as follows:

"ART. 479. Any ecclesiastical or civil authority who shall perform or authorize the ceremony in any marriage

prohibited by law, or barred by an impediment not capable of dispensation, shall suffer the penalties of suspension in its medium and maximum degrees and a fine of not less than 625 and not more than 6,250 pesetas.

"If the impediment shall be subject to dispensation, the penalty shall be destierro in its minimum degree and a fine of not less than 325 and not more than 3,250 pesetas."

Article 475 of that code reads:

"ART. 475. Any minor who shall marry without the consent of his or her parents, or other person standing in loco parentis, shall suffer the penalty of prision correccional in its minimum and medium degrees.

"The offender shall be pardoned as soon as the parents or the persons referred to in the next preceding paragraph shall approve the marriage."

In the case of the *United States vs. Peñalosa* (1 Phil. Rep., 109), this court held that "a minor who marries without parental consent in the false belief that she is of age is not criminally responsible," and that, "it is not criminal negligence for a husband to rely upon his wife's statement of her age nor for the wife to rely upon that of her father." In that case the facts relative to the guilt of the husband, who was charged with a violation of article 475 of the Penal Code in that he had married a woman who at the time of the ceremony was under the age of consent, are stated by the court as follows:

"As for the husband, it has been proved that two days before the marriage was celebrated he received a letter from the woman in which she said that she was 21 years of age. This letter the defendant showed to the clergyman who married them. The woman when the marriage ceremony was performed took an oath before the clergyman, in the presence of her husband, that she was 21 years of age. The defendant testifies that he had no suspicion that the woman was a minor. This statement has not been contradicted and we consider that it suffices to demonstrate that the defendant acted under a mistake of fact, and in conformity with the principle laid down in this opinion he has not been guilty of a violation of article 475 in connection with article 13, No. 3, nor in any other manner."

The principles referred to are as follows:

"The accused were convicted in the lower court for the violation of this article, it appearing from the evidence adduced that the accused, Marcosa Peñalosa, was not 21 years of age on the 3d day of May, 1901, when she married the codefendant, and that she contracted the marriage without the consent of her father.

"Should the judgment appealed from be affirmed if the woman was in fact less than 21 years of age, without taking into consideration what was her belief concerning her age? Many instances can be called to mind in which there may exist an error in good faith concerning this point. A man who is about to marry and is ignorant of his exact age seeks and obtains a certified copy of the registry of his baptism. From this it appears that he was born twenty-one years before the 1st day of June, let us say. He marries on the 15th day of June. It develops later that the person who took the copy of the registry of baptism read July as June, and as a matter of fact the man in question did not complete his twenty-one years until the 1st day of July, fifteen days after his marriage. Can such a one be convicted of a violation of article 475? It would seem that this case is included within those of the article. He was in fact a minor when he married, and he married without the consent of his-parents. If it is true that so far as the parent is concerned the offense has been committed, but can the same be said with reference to the State in the absence of a voluntary violation of the law? Article 1 of the Code does not contain the words 'with malice' that are to be found in the Code of 1822; nevertheless Pacheco, the eminent commentator, has said that those words are included in the word 'voluntary' (*El Código Penal Concordado y Comentado*, Vol. I, folio 74, third edition); and he states positively that crime cannot exist without intent.

"Other commentators, without being in entire conformity with Pacheco, nevertheless are agreed up to a certain

point. Groizard says: 'Such is the general rule; so it is ordinarily (Codigo Penal de 1870, Vol. I, folio 37.) Viada says that 'in the majority of cases, in the absence of intent there has been no crime; but that there can exist in some cases the latter without the former.' (Vol. I, Codigo Penal Reformado de 1870, folio 16.) Silvela says: 'In effect it suffices to remember the first article, which states that where there is no intent there is no crime, * * * in order to assert without fear of mistake that in our Code the substance of a crime does not exist if there is not a deed, an act which falls within the sphere of ethics, if there is not a moral wrong.' (Vol. 2, Derecho Penal, folio 169.)

"The theory that the absence of the words 'with malice' in the prevailing Code has this effect is supported by the provisions of article 568 which says: 'He who by reckless negligence commits an act which would constitute a grave crime if malice were present shall be punished,' etc.

"The supreme court in several successive sentences has followed the same doctrine: 'It is indispensable that this (action) in order to constitute a crime should carry with it all the malice which the volition and intention to cause the evil which may be the object of the said crime suppose.' (Judgment of May 31, 1882.)

"In a cause for falsity the facts involved were that the defendant had married 'before the municipal judge of the pueblo of Rubete without other ceremony than the simple manifestation and expression of his wishes and those of the woman Leonor with whom he married before said municipal judge; that relying upon that, on account of his ignorance and lack of instruction, on the 27th of June, 1882, and the 5th of April, 1884, in the municipal court of the pueblo of Polopos he registered as legitimate children his sons, Jose and Emilio, the offspring of the illicit union of the defendant and Leonor Gonzales.' For the crime of falsity committed by reckless negligence the Criminal Audiencia of Albuliul condemned the said defendant to the penalty of four months and one day of arresto mayor. The Supreme Court annulled said sentence 'considering that whatever might be the civil effects of the registration of his three sons entered by the accused in the Civil and Parochial Registers, it cannot partake of the nature of a crime for lack of the necessary element of volition or intent to offend, essential to every punishable act or omission; neither did he act with negligence. (Judgment of March 16, 1892.)

"In a cause prosecuted against the Chinese Sy-Ticco and against Don Guillermo Partier, in the court of Quiapo, for falsification of trade-marks, the Criminal Chamber of the Audiencia of Manila condemned the Chinaman to two years and some months of presidio correccional, and Partier to one year and some months of similar imprisonment. A writ of error was sued out in the name of Partier. The Supreme Court annulled this sentence, 'considering that the moral element of the crime, or, in other words, existence or nonexistence of intent and malice in the commission of an act designated and punished by the law as criminal is essentially a question of fact for exclusive judgment and determination of the trial court.'

"Considering that the act charged against the accused, Guillermo Partier, of having printed in his lithographic establishment the trade-mark of the cigarette' packages of the Insular factory by virtue of a supposed order of the owner of said factory, to whose injury the Chinaman Abelardo Zacarias Sy-Ticco ordered him to do the said fraudulent printing, cannot be considered (from the facts declared proved in the final sentence of acquittal of the Court of First Instance, accepted in its entirety and without any addition by the Appellate Court) as constituting intentional participation or cooperation in deed of falsification and defraudation committed by the former, since it does not appear in any part of the sentence that Partier was in connivance with Sy-Ticco nor that he had any reason to suspect the true character of him who, styling himself the representative of Señor Santa Marina, the owner of the La Insular factory, gave him the order to print the trade-mark of this factory on the packages, which were to be used to hold cigarettes.' (Judgment of December 30, 1896.)

"The judgment of October 4, 1893, is of the same tenor. It is not necessary to hold in this action that no crime mentioned in the Code can exist without intent. It suffices for the present to decide, as we do decide, that one cannot be convicted under article 475 when by reason of a mistake of fact there does not exist the intention to commit the crime."

In the case of the United States vs. De los Reyes (1 Phil. Rep., 375), it was held that "a woman who marries a second time under a bona fide belief that her former spouse is dead is not guilty of bigamy," the court saying:

"We have recently held, in the United States vs. Marcosa Peñalosa and Enrique Rodriguez, decided January 27, 1902, that there can be no conviction under article 475 of the Penal Code, where by reason of a mistake of fact the intention to commit the crime does not exist, and we think the same principle must apply to this case. The defendant was therefore properly acquitted of the crime charged in the complaint."

This court having held that neither of the spouses can be convicted for a violation of article 475 if he acted in good faith and without the knowledge that the other was under the age of consent, the question naturally arises whether the person solemnizing the marriage may plead similar good faith in defense to an action brought against him under article 479. We are of the opinion that he may. There presents itself to us no reason why the rule applicable to the persons married should not be alike applicable to the person performing the ceremony which makes them man and wife. It is very easy to deceive an officiating clergyman as to the ages of the persons who present themselves for marriage—much easier than it is to deceive either of the spouses in relation to the same matter. Persons who are sufficiently acquainted with each other to desire marriage are naturally presumed to know the age of each other. If a man desiring to marry a woman may be excused from criminal prosecution upon the ground that he has been deceived and mistaken as to her age, it would seem that the clergyman, who knows neither of the parties and who must of necessity depend upon an independent investigation in order to determine the ages of the parties, would be in a far better position to invoke the protection of the principle than would the husband.

Moreover, it is evident from the sections of General Orders, No. 68, above quoted, that it was the intention of the makers of that law to permit the officiating clergy-man or other person solemnizing the marriage to determine the fact of age or nonage upon the testimony of witnesses. To that end he is given the authority to examine on oath the persons who present themselves for marriage and any witnesses which they may produce or which he may desire to call relative to age. Having the right to determine a question upon the testimony of witnesses, it would seem strange indeed that he could be prosecuted criminally for a wrong determination of that question. The mere fact that two persons might differ as to the conclusion which ought to be reached upon a given state of facts or upon the testimony of certain witnesses is not sufficient to justify the conclusion that the one whose conclusion is wrong is guilty of a crime, while he whose judgment is right is innocent. Both have exercised the same qualities, the same functions, and the Same good faith. That the one may be wrong and the other right furnishes no reason for classifying the one as a criminal and the other as an innocent person.

There is some evidence in the record tending to show that the clergyman did not act in good faith in determining the question of age, one of the witnesses for the prosecution intimating that the accused was informed by one of the contracting parties that the girl was under eighteen, and that he, instead of refusing thereupon to go forward with the marriage, suggested to her that she declare herself to be eighteen or over and that he would obtain witnesses to substantiate her declaration. We have some difficulty in finding the facts sought to be established by this testimony. The witnesses who testified were those released from prosecution for that purpose. Such testimony, while under proper circumstances entirely acceptable, is at the outset always subject to suspicion and it requires only very little credible evidence to ripen that suspicion into a certainty. That additional evidence is found in this case in the form of written statements made by these witnesses and declared by them under oath to be true. These written statements are those prepared by the accused at the time of the ceremony and presented to the contracting parties and their witnesses for signature. They were duly signed and sworn to by those parties and witnesses. Although the oath is not in the form prescribed by General Orders, No. 68, nevertheless it contains all of the requisites essential to a valid declaration under that Act.

It appears in the record that the father of the girl gave his consent to her marriage some few days after the ceremony, and, therefore, under article 475 of the Penal Code, "pardoned" the offending parties. It is contended that this consent is retroactive and deprives the acts complained of of all illegality, and that the accused should be acquitted for that reason. We do not find it necessary to decide this question, as there are other grounds upon which the acquittal may be based. Nor do we decide the question whether, in fact, the marriage performed was one "prohibited by law," under article 479 of the Penal Code, above quoted. While this is, of course, a fundamental question and in all reason should be taken up and decided first of all, there having been some difference of opinion on the court on the matter and the decision of the case being plain and unanimous along other lines, we have decided not to dispose of that question at this time.

It appearing clear to us that, even though it be admitted that the marriage complained of was illegal and that the subsequent consent of the parent did not relieve the defendant of liability for the part he had taken therein, the accused acted in good faith without criminal intent, and that he made the investigation required by law in a reasonably satisfactory manner, the conviction cannot stand.

The judgment is reversed and the accused acquitted of the crime charged. So ordered.

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

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