

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LINO RAMOS CALUBAQUIB, DEFENDANT AND APPELLANT.*G.R. No. 8973. December 11, 1913*

Ponente: CARSON, J.

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This is an appeal from a judgment of the Court of First Instance of Isabela, convicting the defendant and appellant of the offense of contracting an illegal marriage in violation of article 471 of the Penal Code. The information charges that on or about May 22, 1912, in the municipality of Ilagan, Isabela Province, the defendant being then legitimately married to one Maria Libang, voluntarily, illegally, and criminally contracted a second marriage with another woman named Primitiva Badua, during the lifetime of his first wife. The trial court found the defendant guilty as charged, and sentenced him to imprisonment for six years and one day.

The record discloses that the defendant was lawfully married on February 16, 1910, to Maria Libang in the municipality of Tuguegarao, Cagayan Province, by the justice of the peace of that municipality, as shown by Exhibit A, which was duly admitted in evidence. The first marriage is not disputed, and defendant admitted that it had never been legally dissolved in any manner whatever.

Defendant was a Constabulary soldier and lived with his first wife in Tuguegarao until he was transferred for duty to Ilagan, Isabela Province. On May 22, 1912, defendant and the woman named Primitiva Badua presented themselves at the office of the justice of the peace of Ilagan, and were there and then married by the justice of the peace. The appellant represented himself to be a single man, and in proof of his claim exhibited to the justice of the peace his cedula showing him to be a single man. The certificate of this marriage executed by the justice of the peace was admitted in evidence and made a part of the record in the case. The justice of the peace testified that he performed the marriage ceremony and that all the formalities of the law were complied with, and his statement was corroborated by the testimony of Gavino Gumar, deputy sheriff of Ilagan, and his wife, whose names are attached as witnesses to the marriage certificate, and who stated that they were present and witnessed the marriage ceremony. It further appears that immediately after this marriage ceremony the appellant and the woman Primitiva Badua began living together as husband and wife, and later reported to the girl's father that they had been married by the justice of the peace.

At the trial in the court below the appellant maintained that no marriage was ever legally celebrated between himself and Primitiva Badua, and while he admitted that she lived with him, he asserted that she did so merely as his concubine (*querida*). The woman Primitiva Badua who at the preliminary examination had testified that she and appellant were married, denied that fact at the trial in the Court of First Instance, and corroborated the statements of the defendant as to the nature of the relations between him and herself, and in explanation of her testimony at the preliminary investigation she charged that the justice of the peace had instructed her how to testify, and that she had stated that the defendant was her husband because the justice of the peace had required her to do so.

The story of the defendant is that he went with the woman to the office of the justice of the peace on the night of May 21, 1912, not for the purpose of getting married, but for the purpose of making some arrangement whereby he could secure the consent or approval of the justice of the peace to the relations of concubinage between himself and the woman. He says that the justice of the peace asked them a number of questions which he wrote down, and that thereafter the justice of the peace told him that he could take the woman and go away with her; that they did go and began living together that very night at the house of one Saturnina Jamias, where appellant was then staying. Defendant testified further that he himself returned the next morning to the office of the justice of the peace, who gave him several papers, which he took to Primitiva Badua for her signature. According to his statement the woman did not accompany him the next morning to the office of the justice of the peace, but remained at the house of Saturnina Jamias. The woman testified along the same line, and both claimed that they did not understand the contents of the papers. They claimed also that they told the justice of the peace on the night before that they did not want to get married but merely wanted him to arrange some way by which they could live together.

In rebuttal, the justice of the peace testified that the defendant and the woman Badua came to his house on the night of May 21 and told him that they wanted to be married; that he made some inquiries of them and told them to return the next morning and bring witnesses; that they did return the next morning and that he there and then performed the marriage ceremony to which reference has already been made.

The trial judge refused to believe the story told by the accused, and accepted the testimony of the justice of the peace as true, and there is nothing in the record which would justify us in disturbing his findings in this regard. Even without the evidence of the justice of the peace it would be difficult to believe the claim of the accused and the woman Badua that they thought the papers which were signed by them related merely to their right to live together in concubinage. It appears that both of them are persons of more than the average education and that they were both able to read and write. The defendant was a practicante (hospital steward) in the Constabulary forces and his duties were such as to indicate that he was a man of more than ordinary education and ability. Under all the circumstances it seems highly improbable that the papers in question could have been signed and the various questions addressed to them by the justice of the peace answered by the couple without their knowledge that they related to their marriage. Moreover it would seem highly improbable that two intelligent people should wake up a justice of the peace at 10 o'clock at night in order to obtain his permission and sanction to live together unless they contemplated matrimony. There is nothing in the record which would lead us to conclude that either of these parties was so simpleminded as to believe for a moment that the justice of the peace had authority to sanction or legally authorize their amorous relations without the performance of the marriage ceremony. The record shows that the woman had previously given birth to a child and that she was pregnant at the time when she called on the justice of the peace on the night of May 21. She stated as much to the justice of the peace and intimated that the defendant was the cause of her trouble and that she wanted to get married because she was afraid of her father. The natural conclusion from the record is that the defendant and the woman had been principals in an illicit amour which had been in progress for some time, and that they presented themselves to the justice of the peace for the purpose of getting married in order to appease the anger of the woman's father.

The father stated in his testimony that the defendant and his daughter went away at the time of the alleged marriage and remained away about a month; that later they returned to his house and lived there as man and wife, and told him that they had been married by the justice of the peace. He said furthermore that it was commonly rumored and generally understood that his daughter and the defendant had been married by the justice of the peace. The father was called as a witness for the defense and at first he seemed to be inclined to shield the defendant, but taken as a whole his testimony strongly tends to support the case made out by the prosecution and to rebut the claim of the defendant that he was not married by the justice of the peace and that neither he nor the

woman believed that they were married.

We are satisfied from the whole record that there is no reasonable doubt that the defendant and appellant contracted the second marriage in violation of the provisions of article 471 of the Penal Code, and that the judgment of conviction by the trial court should be affirmed.

No mitigating circumstances were found by the trial court or developed in the record, and the penalty should have been imposed in the medium degrees. The trial court imposed the penalty in the minimum degree. We conclude that the sentence thus imposed, modified by substituting the penalty of eight years and one day of prision mayor for so much thereof as imposes the penalty of six years and one day of prision mayor, should be affirmed with the costs of this instance against the appellant. So ordered.

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

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