

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN E. EVANGELISTA, DEFENDANT AND APPELLANT.*G.R. No. 9841. January 09, 1915*

Ponente: TRENT, J.

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The appellant was arraigned in the court below on a charge of bigamy and pleaded not guilty. The prosecution introduced Exhibit A, a document purporting to be an abstract from the church records of the Iglesia Catolica Filipina Independiente of the District of Tondo, Manila, P. I., which certifies that in Book 5 of the matrimonial register of that parish, on folio 2, there is found an entry recording the marriage of Juan Espanol Evangelista, "son of Modesto, now deceased, and Romana Rivera Evangelista," and Manuela Espinosa. The document appears to be signed by the parish priest and to bear the seal of the church. The admission of this document was objected to, and is assigned as error on this appeal. Exhibit B is a certificate of marriage of Juan E. Evangelista, "son of Modesto E. Evangelista and Komana Rivera," and Rosario de la Cruz, duly certified by the justice of the peace of the municipality of Zamboanga, who performed the ceremony. This marriage occurred on October 18, 1907.

Rosario de la Cruz was a witness for the prosecution. She testified that shortly after her marriage to the defendant in 1907 she accompanied him to Manila and that he took her to a house in Santa Mesa where there lived Manuela Espinosa. She and her husband lived in this house with Manuela Espinosa for about a month, during which time the defendant slept with Manuela. On the direct examination she testified that Manuela told her that she was married to the defendant. The defendant never admitted to her that he was married to Manuela. On cross-examination she was asked how she knew that the defendant was married to Manuela, to which she replied: "I know." On being asked who told her she replied: "If I saw myself, there was no necessity of telling me."

Again, she was asked: Q. Is it not true that the reason why you think the accused is married to that woman is because you have seen him sleep with another woman?—A. Yes. With her—his woman.

Witness first saw the document, Exhibit A, in the office of the prosecuting attorney of Zamboanga and had ordered a cousin of her to get it from the records of the church in Manila. She was not present at the alleged marriage of Manuela with the "defendant, and apparently first saw this woman in 1907, when her husband took her to the house in Santa Mesa upon their arrival in Manila.

The defendant, testifying in his own behalf, admitted living in Santa Mesa with Rosario de la Cruz and Carmen Candelaria, but denied that Manuel Espinosa had lived there. This, of course, puts in question all the testimony of his wife Rosario respecting Manuela Espinosa.

The lower court accepted as true the testimony of Rosario. For the purposes of this decision we accept this estimate of her testimony. It is not in any way direct evidence of the fact of the defendant's alleged marriage in 1903. She was not an eyewitness to the marriage and her testimony shows clearly that the defendant never admitted the fact of such a marriage to her. Her testimony is, it is true, evidence of cohabitation. But evidence of cohabitation is not sufficient to establish marriage; it is merely corroborative of that fact.

"In a prosecution for bigamy such evidence (of cohabitation) is not sufficient to prove the first marriage. Some of the cases admit evidence of cohabitation, conduct, and reputation to corroborate direct evidence and to prove the continuance of the marriage. Other authorities reject it altogether." (Underhill on Crim. Ev., sec. 403.)

The case for the prosecution, therefore, depends upon the competency of Exhibit A. The court below held this document competent evidence under the decision of this court in *United States vs. Orosa* (7 Phil. Rep., 247.) This was a case of bigamy also, and the record relied upon was likewise an abstract from a church register of marriages performed by the parish priest. The marriage occurred prior to American occupation, and this court held that document a public record upon the strength of laws in force under the former sovereignty making it so. We said:

"Canonical certificates, or certified copies thereof, duly authorized by the respective parish priests are still public documents, and may be used for the purpose of establishing 'the facts to which they relate, for there is no legal provision which has taken from the parochial books and the certificates therein recorded under the former legislation their nature as public documents.

"The canonical certificates of marriage recorded in the parochial books prior to the 18th of December, 1899, when General Orders, No. 68, relating to marriage, was promulgated, continue to be considered as public, official documents; and the parish priests still have the legal custody of such books, no law having been enacted prohibiting them, as such custodians of said books, from issuing certified copies of the entries contained therein like any other custodians of archives."

In *United States vs. Arceo* (11 Phil. Rep., 530), which was also a case of bigamy and in which a church record was introduced of a marriage occurring on February 3, 1897, this court said: "As to the nature and character of the entries contained in the parochial books and the certificates thereof issued by the parish priest, it may be stated that the same have not lost their character of public documents for the purpose of proving such acts as are therein referred to, inasmuch as from the time of the change of sovereignty in these Islands to the present day, no law has been enacted abolishing the official and public character of parochial books and entries made therein under the provisions of the former laws; the parish priests continue to be the legal custodians of the parochial books kept during the former sovereignty and as such they may issue certified copies of the entries contained therein in the same manner as do keepers of archives."

In *United States vs. Ibañez* (13 Phil. Rep., 686), a case exactly similar on the point under discussion with the two preceding cases, we said: "It is proper to state herein that parish priests continue to be the legal custodians of the parish records kept under the laws enforced during the former sovereignty, and are authorized to issue true copies, in the form of certificates, of the entries contained in said books. The latter, for the purpose of proving the acts to which they refer, have not lost the character of public documents which they possessed under the former laws."

All of these three cases were of illegal marriage and the abstracts from the church records accepted as proof were those certifying to the celebration of marriages performed prior to the enactment of Act No. 190, and even prior to the change of sovereignty; and that fact must be borne in mind in reading those decisions. They do hold that these records as to acts or facts occurring prior to the change of sovereignty which the former government intrusted to the state church are still public documents. Any other holding would not be justified by any express provision of law enacted by the new sovereignty, and would furthermore be productive of considerable hardship upon persons who relied upon such records. But Exhibit A in this case purports to establish a marriage occurring subsequent to the change of sovereignty and to the passage of our present Code of Civil Procedure. Incorporated in this code is a body of rules of evidence which are supposed to furnish the guiding principles for the admission of evidence, whether oral or documentary. Section 299 reads as follows:

"Public writings.—The written acts or record of the acts of the sovereign authority, of official bodies and

tribunals and of public officers, legislative, judicial, and executive of the Philippine Islands, or of the United States, or of any state of the United States or of a foreign country, and public records kept in the Philippine Islands of private writings are public writings. A copy of a public writing, duly certified to be a true copy thereof, is admissible [evidence in like cases and in like effect as the original writing.]"

Exhibit A is not a public document under section 299, for it is not one of the written acts of the sovereign authority, or of the public officers or official bodies mentioned in the section above quoted; nor is it any public record kept in the Philippine Islands of a private writing. Being a mere private writing, it should have been proved as any other private document. Section 324 of the code provides as follows:

"Proof of writing.—Any writing may be proved either—

"1. By anyone who saw the writing executed; or

"2. By evidence of the genuineness of the handwriting of the maker; or

"3. By the subscribing witness."

A method is provided by law whereby a public record of marriages may be obtained. General Orders No. 68, section 8, reads:

"The person solemnizing the marriage must, at the request of either party, make a certified copy of the certificate, and transmit the original to or file the same with the justice of the peace of the district within which the marriage is celebrated. The written consent to the marriage of a minor shall accompany such certificate. For failing to transmit such certificate or written consent he shall be fined not less than fifty and not more than one hundred pesos."

This certificate, when once transmitted to the justice of the peace, as provided in this section of the marriage law, becomes a public record and a certified copy thereof may be admitted as evidence under section 299, *supra*. It is evident that a mere church record made subsequent to the promulgation of General Orders, No. 68 and the passage of Act No. 190 is not a "public writing" within the meaning of that section. Our attention has not been called to any provision of law making priests or ministers public officials, or requiring them to keep a record of marriages. The principle on which entries in a register are admitted depends upon the public duty of the person who keeps the register to make such entries in it, after satisfying himself of their truth. Exhibit A purports to be a true copy of an entry in Book 5 of the Independent Filipino Catholic Church. In view of the fact that the person who purports to have performed the ceremony was not a public official and that Book 5 is not a public record, the result must necessarily be that Exhibit A is nothing more than a copy of a private document. The objection to its introduction should have been sustained. If this document had been proved by one of the methods set forth in section 324, *supra*, the question might arise whether the document would then be sufficient to establish the former marriage. Upon this point we find it unnecessary to express an opinion, as the genuineness of the document was not proven.

For the foregoing reasons the judgment appealed from is reversed, and the defendant acquitted with costs de officio. So ordered.

Arellano, C. J., and Johnson, J., concur.

Moreland, J., concurs in the result.

DISSENTING**TORRES, J.,**

The priest or minister of any religious sect who performs a marriage ceremony in these Islands is authorized by the law to issue a certificate of the ceremony he has performed, and this certificate has the character of a public and official document and constitutes prima facie evidence of the marriage ceremony performed, unless the contrary be duly proven.

The procedure of forwarding the original certificate to the justice of the peace of the corresponding municipality is a requisite independent of the force and validity of the document issued by the person authorizing or performing the marriage ceremony and of the copy of such certificate issued to the contracting parties for the protection of their rights.

On this ground, and holding the crime and the guilt of the accused to have been proven, the judgment appealed from should be affirmed.

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