

3 Phil. 510

[G.R. No. 1601. March 28, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. NICOLAS MACLEOD,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On April 7, 1903, Concepcion Policarpo filed a sworn complaint charging Nicolas Macleod of the crime of illegal matrimony, in that the said Macleod, on or about the 30th day of March of the said year, in the city of Manila, Philippine Islands, willfully, illegally, and criminally contracted a second marriage with Sotera Agustin, the marriage entered into by him with the complaining witness on November 5, 1900, not having been legally dissolved at that time; this contrary to the statute in such case made and provided.

From the evidence taken at the trial it appears that the complaining witness, Concepcion Policarpo, testified that she is the wife of the accused, whom she married in this city November 5, 1900, before Nicolas Zamora, a minister of the gospel, who issued a marriage certificate, marked "Exhibit A" and introduced by the complaining witness, which certificate is signed by the said minister as pastor of the Methodist Episcopal Church; that she and her husband lived together from that date until February 29, 1903, on which date the complaining witness left him, she having discovered that he had married Sotera Agustin; that two children were born to them, both of whom died.

Sotera Agustin testified that she married the accused, who passed under the name of Nicolas Hernandez, March 30, 1903, in this city, before Nicolas Zamora, pastor of the Methodist Episcopal Church, who issued a marriage certificate (Record, p. 45) signed by him, and introduced in evidence as "Exhibit B"; that they lived together as husband and wife for only nine days, because the wife of Nicolas, whom she (the witness) had met for the first time two weeks before her marriage at the Victoria Tobacco Factory, where she was working, had filed a criminal complaint against him; that her mother Nalaria gave her

consent to the witness's marriage with the accused; and that his father went to see her in her house on the night of March 30, and asked her if there was any impediment to the marriage, and informed her furthermore that so far as his son was concerned no one was entitled to make opposition.

The officiating minister, Nicolas Zamora, testified that he had been a minister of the said church since March 10, 1900. He identified the two certificates introduced in evidence as Exhibits A and B, and testified that they had been issued by him; that the accused represented to him that his name was Hernandez; that four days after having solemnized the marriage of the accused with Sotera Agustin, his lawful wife, accompanied by her sister and some person unknown, came to the house of the witness for the purpose of ascertaining whether it were true that the accused had contracted a second marriage; that after having examined his books the witness stated to them that Nicolas Hernandez had married Sotera Agustin; that then these people informed him that this was the same man who had formerly married Concepcion Policarpo under the name of Macleod; that thereupon, in view of the statements of the lawful wife and after consulting the books of 1900, in which it appeared that Nicolas Macleod had declared that the name of his father was Ciriaco Macleod and that of his mother Jacoba Hernandez, and that for the purpose of the second marriage he had transposed the names of his parents, the witness took the people to the prosecuting attorney, Senor Changco, that the proper charge might be filed; that he did not pay any particular attention to the appearance of the accused when he married him for the first time, nor did he recall having seen him before when he came to the witness to be married the second time, owing to the large number of persons who come to him to be married; that he only recalls the second ceremony because of the presence of the witness Aragon.

Severino Aragon, father-in-law of Sotera Agustin, testified that on the day following the night of March 28th, on which his niece (sic) Sotera Agustin disappeared, he heard that she was living with Nicolas Macleod; that he went to see her mother and informed her that her daughter had been abducted; that the mother then told him that the accused had not returned to the house since the preceding night; that it was then agreed that they had better marry for the purpose of saving the reputation of the witness's niece (sic); and that the mother of the accused assured them that he was a single man. This witness identified his signature on Exhibit B.

It is a fact, established in this case by the testimony of witnesses and by authentic documents, that Nicolas Macleod contracted a second marriage with Sotera Agustin under the provisions of General Orders, No. 68, dated December 18, 1899, the only civil law in

force concerning marriage, while his former marriage, contracted with Concepcion Policarpo, still existed. Consequently he has committed the crime of bigamy and is subject to the penalties established in article 471 of the Penal Code.

The accused, in his testimony under oath, admitted having married Sotera Agustin March 30, 1903, about 7 p. m., in the house of the preacher Mr. Zamora, but alleged that he was compelled to do so by intimidation and under threats of death, and notwithstanding the fact that he had already stated that he could not marry because he was already married to another woman; that it was due to the insistence of three persons who captured him and took him in a carromata to the house of the said preacher; that he was unable to call for help because he was afraid of his captors; that he did not say anything in Mr. Zamora's house because they told him that he must remain silent; that he did not subsequently file any complaint against the said three individuals, as they said that they were officers of the Government.

The parents of the accused and one of his neighbors testified that he was married to Sotera Agustin by force and intimidation by threats of death, and this notwithstanding the fact that the father of the accused, by name Ciriaco Meclat, stated that the accused was already married.

Section 5 of General Orders, No. 68, as amended, provides that the marriage may be solemnized by either a judge of any court inferior to the Supreme Court, justice of the peace, priest, or minister of the gospel of any denomination.

It is public and notorious that Mr. Nicolas Zamora has been following the calling of a Methodist Episcopal preacher, as he calls himself in the certificates of marriage issued (Record, p. 45), and as such was authorized to solemnize marriages between persons possessed of the qualifications required by the said general order. There is no evidence whatever in the record to the contrary tending to show that Mr. Zamora was not a minister of that church.

This being so, it is unquestionable that the marriage contracted by the accused, Nicolas Macleod or Meclat, with the complaining witness, Concepcion Policarpo, was a lawful marriage, it having been entered into in accordance with the provisions of the law. Therefore, it not appearing that said prior marriage has been dissolved, and the first lawful wife being still alive, the accused, Nicolas Macleod or Meclat, was unable to contract another marriage with Sotera Agustin without incurring the penalty prescribed by the said

article 471 of the code.

The charge against the accused can not be considered to have been weakened or his innocence established by his own improbable statements or by the incredible testimony of his parents and one of his neighbors, as witnesses. The evidence shows that the family of Sotera Agustin, who had been abducted, finding it necessary to conceal the girl's dishonor, consented to her marriage with the accused, her abductor, upon the supposition that he was a single man as stated by him, and that both the girl and the minister who solemnized the marriage were deceived, the accused Nicolas Macleod or Meclat for the purpose of the second marriage having represented that his name was Hernandez. Consequently there can be no doubt of his guilt of the crime of illegal matrimony. No mitigating or aggravating circumstances occurred in the commission of the crime.

For the reasons stated, we are of the opinion that the judgment below must be affirmed, with the costs against the appellant, the penalty imposed upon the accused, however, to be that of nine years of *prision mayor*. Judgment will be entered accordingly, and the case remanded to the trial court with a certified copy thereof and of this decision. So ordered.

Arellano, C. J., Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.
