1 Phil. 328

[G.R. No. 589. August 20, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FELIPE ISLA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This is a prosecution for bigamy. It is admitted that the defendant, Felipe Isla, was married to Aleja Pascual on November 14, 1901, in the parish church of Tondo in this capital. On 5th of November, 1899, in the parish church of Santa Cruz, this capital, Felipe Isla was married to Maria Hilario, the complaining witness. The defendant claims that he is not the Felipe Isla who was a party to the marriage of 1899. The evidence to show that he was is the following: He admits that he knows Maria Hilario and that she was living with him as his mistress in 1899. She testifies that the defendant is the person whom she married. Also so testify the two witnesses to that marriage who are named in the record thereof, namely, Maximo Briseno and Alexandra de los Angeles. The defendant is a native of Paranaque. So was the Felipe Isla of that marriage. Passing the statements of the defendant's witnesses that they understood that he was a bachelor prior to his marriage in 1901 as not entitled to any weight in face of the direct evidence to the contrary, the only other ground on which the defendant rests his denial is the fact that the record of the first marriage shows that the Felipe Isla there mentioned was the son of Valentin Isla and Maria Madayag, both deceased, while the defendant testifies that he is the son of Gabriel Isla and Petra de Leon.

If the only evidence of the first marriage had been this certificate, it is undoubtedly true that it would not have been sufficient to show that the Felipe Isla therein named is the defendant. But other evidence was received which proved that fact. This evidence shows that the statement in that record as to the parentage of the defendant was incorrect. The record, however, was still competent evidence to prove the marriage of a Felipe Isla, the other evidence pointing out who that Felipe Isla is.

It is claimed by the defendant that he should have been convicted under article 440 of the Penal Code and not under article 471. The history of the former article is given by Viada in the Commentaries on the Penal Code (vol. 3, p. 128) as follows:

> "The object of the disposition of this article (455) introduced by the revisors of 1870, was to restrain the public scandal which would result from the fact of a person uniting himself in canonical matrimony after the promulgation of the Civil Marriage Law, abandoning his consort, and contracting a new marriage according to the beforementioned civil law, with another person, without the canonical having been legitimately annulled, or vice versa; both cases equally possible without resorting to intrigue and deceit from the moment that article 2 of the beforementioned law of June 18, 1870, did not recognize civil effects with respect to the persons and property of the husband and wife of their descendant, except in the case of civil marriage or that celebrated according to the provisions of the before-mentioned law; and furthermore, the ecclesiastical power could very well ignore the legitimacy and validity of said civil partnerships, in which case the latter would not be an obstacle to a legal celebration of the canonical marriage between persons distinct from those who were only bound by a civil tie.
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> "But from the time that article 1 of the royal decree of February 9, 1875, conceded all the civil effects recognized by the laws of Spain until the promulgation of the 18th of June, 1870, to canonical marriages, celebrated or to be celebrated, in accordance with the sacred canons, the existence of the crime mentioned, prescribed, and punished in this article 455 is not possible, since every new marriage, either civil or canonical, celebrated without being legitimately relieved of the previous obligation, will constitute an offense against the civil status of the persons, and therefore the crime of bigamy, prescribed and punished by article 486."

The law of 1870 relating to civil marriages never was promulgated and was never in force in these Islands. The provisions of the Civil Code relating to civil marriages and a civil registry were in force here for two weeks after the promulgation of the Civil Code, and then were suspended by royal order. It can therefore be said that civil marriages were never recognized here until the promulgation on the 11th day of December, 1899, by the Military Government of the United States, of General Orders, No. 68.

Why article 440 was retained in the Penal Code when it was placed in force here is not apparent. It is enough to say that in this case both marriages were canonical and indissoluble and that the defendant falls exactly within the terms of article 471, This court has applied said article to a case where the second marriage was celebrated in accordance with the provisions of said General Orders, No. 68. (The United States vs. Leoncio Cruz, December 13, 1901.)

For the reasons above stated the judgment of the court below is confirmed with costs of this instance to the appellant. So ordered.

Arellano, C. J., Torres, Cooper, and *Ladd, JJ.,* concur.

Mapa, J., did not sit in this case.

Date created: April 03, 2014