

7 Phil. 247

[G.R. No. 2916. December 29, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE OROSA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the 16th of .May, 1905, the defendant, Vicente Orosa, was charged h.y the provincial fiscal of Tayabas with the crime of illegal mnvriage (bigamy) in that he, on or about the 1.8th of April of the same year, being previously canonieally married to one Laura Tenorio, and without such marriage having been lawfully dissolved, contracted a civil marriage with Gregoria Zaballero in the town of Lucena of the same province.

Proceedings having been instituted upon the said complaint, the court, in view of the result of the evidence introduced at the trial, entered judgment on the 9th of August, 1905, sentencing the said Vicente Orosa to eight years and one day's imprisonment (prision mayor) with the costs of proceedings, from which said judgment the defendant appealed.

It was fully established at the trial of this case by parol and documentary proof that Vicente Orosa. had been lawfully married on the 1.9th of July, 1897, to one Laura Tenorio, in the parish church of the town of Taal by a priest delegated by the regular parish priest of the said town in the presence of witnesses in accordance with the canonical laws then in force in these Islands; that Laura Tenorio, tin1 lawful wife of the defendant was still alive on the 31st of July, 1905, when the trial of this case was .commenced upon the aforesaid complaint; and that Vicente Orosa contracted a civil marriage with Gregoria Zaballero on the 18th of April, 1905, before the justice of the peace of the town of Lucena, Tayabas.

Article1 471 of the Penal Code provides: "Any person who shall contract a second or subsequent marriage without the prior marriage being lawfully dissolved shall be punished with the penalty of prision mayor."

For the purpose of showing defendant's guilt under the above quoted article, the prosecution introduced in evidence the certificate marked "Exhibit E,M appearing on page 62, to the effect that on the 19th of July, 1897, before the Rev. Jos6 Villalobos, duly authorized by the parish priest of the town of Taal, in the presence of the witnesses Antonio Panganiban and Nieves Orosa, the defendant, Vicente Orosa, and Xvaura Tenorio were married in accordance with the rites of the Catholic Church and with the formalities prescribed by the Council of Trent.

The aforesaid certificate, which contains a literal copy of the certificate of marriage appearing on page 29, book 21 of the register of marriages kept by the parish priest of the said town, is a public document and, as such, has the same value and the same efficacy as though the original certificate had been presented. It is stated in the said certificate that it is a literal copy of the original which appears on the page and in the book aforesaid of the register of marriages of that parish. The Rev. Cecilio Punsalan, who signed the said certificate, states at the end thereof that the same is a true and correct copy of the original, and in a notarial act which appears on page 63 of the record he stated under oath in the presence of the notary and two witnesses on the 22d day of May, 1905, that the contents of the said certificate of marriage, as set out in his certificate, the same bearing the seal of the parish, is true. All of these facts go to show that the certificate introduced in evidence for the purpose of establishing the former marriage between the defendant and Laura Tenorio was genuine and authentic.

On the 19th of July, 1897, the date of the certificate of marriage, and prior to the 18th of December, 1899, the parochial registries of marriages, baptisms, and deaths were undoubtedly considered as official books and registers, and the certificates of marriages and deaths taken from those books were considered as public documents, provided such certificates were duly entered upon the said books, and the latter were kept by the parish priest in accordance with the provisions of the Council of Trent, provisions which had the force of law in Spain as per the royal cedula of the 12th of July, 1564, which was later embodied in Law 13, Title I, Book I of the Novissima Recopilacion.

Article 579 of the Code of Civil Procedure, in force at the time of the marriage in question, and up to the 30th of September, 1901, provides in part as follows:

"The following are solemn public documents, viz:

* * * * *

“6. Records or certified copies of records of births, marriages, and deaths, taken from the books thereof by parish priests or by persons in charge of the civil register.”

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 the said books, from issuing certified. copies of the entries contained therein like any other custodians of archives.

In all other respects the certificate, Exhibit E, has the same efficacy as the original certificate itself, according to section 299 of the Code of Civil Procedure; section 313 of which code, relating to proof of official documents, provides:

“Official documents may be proved, as follows:

* * * * *

“6. Official documents of any other class in the Philippine Islands, by the original, or by copy certified by the legal keeper thereof.”

Section 314 of the same code provides:

“An authorized public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.”

In the light of these legal provisions, and of the provisions of section 818 of the Code of Civil Procedure above referred to, it is evident that the said certificate of marriage, Exhibit E, was drawn up and issued by the priest charged with the legal custody of the registers of marriage from which it was copied literally.

Aside from the indisputable probatory force of the said certificate of marriage, the marriage itself, performed in the parochial church of the town of Taal in the presence of a priest and witnesses in accordance with the canonical laws, was likewise established by the unanimous testimony of eyewitnesses to the said marriage. These witnesses were Julian Gracia, Nieves Orosa, the aunt of the defendant, Martin Maranilla, Mariano Holgado, and Laura Tenorio, the latter having introduced in evidence Exhibits A and B, two letters that her husband, the defendant, had written to her, naming her therein as his wife. Consequently it can not be denied that the crime charged in the complaint has been committed, and that the defendant, Vicente Orosa, has been fully proved to be responsible therefor, counsel for the defendant, who waived his right to introduce evidence in his defense, having admitted that the accused had contracted the second marriage with Gregoria Zaballero on the 18th of April, 1905, before the justice of the peace of the town of Lucena, Tayabas, a fact further established by a certificate of marriage marked "Exhibit D" appearing on page 56 of the record. Jose" Barcelona, the justice of the peace who issued the said certificate and before whom, and in the presence of two witnesses, the marriage between Gregoria Zaballero and the defendant, Orosa, was performed, testified as to the authenticity of the said certificate.

Even discarding the testimony of the complaining witness, Laura Tenorio, there is sufficient evidence in the record as to the marriage of the defendant and herself, for in addition to the certificate of their marriage, we have the testimony of four witnesses who were present at the time and who testified as to the priest who performed the ceremony and the witnesses of the same, and other details connected therewith.

Section 58 of General Orders, No. 58, provides that, except with the consent of both, or except in cases of crime committed by one against the other, neither husband nor wife shall be a competent witness for or against the other in a criminal action or proceeding to which one or both shall be parties. It can not be contended that the crime in question was not committed by the defendant, Vicente Orosa, against his lawful wife, Laura Tenorio. Therefore, under the laws now in force, she was a competent witness in this case against her husband, the contention of the defendant to the contrary notwithstanding.

No aggravating or extenuating' circumstances having attended the commission of the crime, the penalty provided in article 471 of the Penal Code should be imposed upon the defendant in its medium degree, as was done by the court below.

For the reasons hereinbefore stated, we are of the opinion that 'the judgment of the court below should be, and it is hereby, affirmed, with the costs of this instance. The defendant,

Vicente Orosa, is however further sentenced to cutter the accessory penalties prescribed in article 61 of the Penal Code. After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the case be remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

Date created: May 05, 2014