ULUDONG UMIICH, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 284

Trial Division of the High Court

Palau District

January 11, 1967

Defendant was convicted in Palau District Court of bigamy, in violation of T.T.C., Sec. 406. On appeal, defendant contends that cohabitation does not constitute bigamy when there has been no marriage between the parties under Palau customary law. The Trial Division of the High Court, Chief Justice E. P. Furber, held that appearance of marriage under local custom is sufficient to constitute "marrying" within meaning of Trust Territory law defining bigamy.

Affirmed.

1. Bigamy-Appearance of Marriage

   Word "marry" in bigamy statutes is used in peculiar sense and, as applied to second or bigamous marriage, does not mean to effect legal marriage, but merely to appear to marry. (T.T.C., Sec. 406)

2. Bigamy-Generally

   To constitut.e bigamous marriage, it is immaterial whether alleged marriage is illegal or defective for some other reason in addition to prior and still-existing marriage of accused. (T.T.C., Sec. 406)

3. Bigamy-Appearance of Marriage

   A.ppearance of common law marriage not involving any ceremony is .sufficient to constitute appearance of marriage for purposes of bigamy statutes, in jurisdictions which still recognize common-law marriages. (T.T.C., Sec. 406)

4. Bigamy-Appearance of Marriage

   In Trust Territory, where marriages under local custom are expressly recognized, appearance of marriage under local custom is sufficient to constitute "marrying" within meaning of bigamy statute, even though no marriage ceremony is involved. (T.T.C., Sees. 406, 694)

5. Bigamy-Generally

   Where accused and alleged bigamous spouses purported to marry and did all things required of them for marriage under Palauan custom, and were generally considered in community to be married, accused was "married" within meaning of statute defining bigamy. (T.T.C., Sec. 406)

6. Bigamy-Generally

   In criminal prosecution for bigamy, trial court may find accused did "marry" his alleged bigamous wife, as term is used in Trust Territory law defining bigamy, regardless of whether actions would have constituted legal marriage if accused's prior marriage to another were not in effect.

Assessor: JUDGE PABLO RINGANG
Interpreter: SYLVESTER F. ALONZ
Counsel for Appellant: WILLIAM O. WALLY
Counsel for Appellee: BENJAMIN N. OITERONG

FURBER, *Chief Justice*

Counsel for the appellant argued that the accused had on February 17, 1966, been convicted of adultery with the person with whom it is now charged he contracted a bigamous marriage, was sentenced to one month's imprisonment therefor, and was released March 17, 1966, and then charged on March 31, 1966, with bigamy arising out of the same type of cohabitation with the same woman, which had been the basis of the adultery charge. He therefore contends the accused was only guilty of adultery and not bigamy. He conceded that the Government witnesses showed cohabitation, and the accused's publicly helping to clear a garden with the alleged bigamous wife. He claimed that there was no evidence, however, that the accused personally had participated in the two "ocheraol" at which the accused and his alleged bigamous wife are alleged to have made publicly-announced contributions.

Counsel for the appellant further claimed that to constitute a marriage under Palauan custom, it is necessary that a couple be engaged and the woman must be brought to the man's relatives with some food from her relatives, then, if the man's relatives approve, they will accept the food, and later the man or his relatives will pay "bus" to the woman's relatives, both spouses must then fulfil their respective obligations as husband and wife. In this instance, he argued, the evidence is clear that the accused's relatives never accepted food from the relatives of the alleged bigamous wife and instead of approving of the alleged marriage, strenously objected to it, one of them finally filing the complaint for bigamy. Counsel for the appellant therefore claimed that the accused and his alleged bigamous wife were merely living in adultery, and that their cohabitation did not constitute bigamy because there had been no marriage between them within the meaning of Trust Territory Code, Section 406 (as amended by Executive Order 84), concerning bigamy, citing Restatement of the Law of Conflict of Laws, Ch. 9, Sec. 428, Comment,"a", and 10 Am. Jur. 2d, Bigamy, §§ 11 and 27.

Counsel for the appellee argued that after the accused's release from jail on March 17, 1966, upon completion of his sentence for adultery, he had married under Palauan custom the woman with whom he had been convicted of engaging in adultery,that this was shown by their participation in two "ocheraol'; at which public acknowledgment of their contributions had been made, by the alleged .bigamous wife having prepared and publicly contributed food which under the custom should have beep prepared by the accused's wife, and by their going together to, preparing food for, and participating together in a funeral at Peleliu,plus the cohabitation and working together in gardening in the presence of passersby. Counsel for the appellee conceded that consent or acquiescence by there!-

atives of the man was regularly needed for a marriage by a younger person under Palauan custom, but claimed that actual consent or acquiescence was not necessary in the case of a marriage by an older titleholder such as the accused in this case, and that in such a situation where the man is a senior member of his lineage, he can marry with just the consent of the wife's relatives. Counsel argued this is so because under the custom, a senior titleholder's relatives cannot properly object to what he does, or as is sometimes stated, will be presumed under the custom to consent to what he does whether they do in fact or not.

Counsel for the appellee therefore contended that the Government had shown a marriage under Palauan custom within the meaning of Trust Territory Code, Section 406 (as amended by Executive Order 84), and since the accused's earlier marriage was not disputed and it was admitted that there had been no divorce from that earlier marriage, the Government had sustained its burden of proof of bigamy and the finding and sentence of the District Court should be affirmed, citing 10 Am. Jur. 2d, Bigamy, §§ 11 and 23.

OPINION

This appeal involves an alleged bigamous marriage in the Palau Islands by two Palauans under Palauan custom. Counsel have discussed in considerable detail the minimum requirements for a valid marriage under Palauan custom and especially the question of whether actual consent by a man's relatives is necessary for such a marriage by a senior male titleholder or male head of a lineage. That, however, is not the real issue in this case.

[1,2] The word "marry" in bigamy statutes, such as Section 406 of the Trust Territory Code, is used in a peculiar sense. From the very nature of the situation, in a jurisdiction in which a person is only allowed by law to

have one spouse at a time, if a person is legally married to one spouse and that marriage is still in effect, he or she cannot enter into a valid marriage with another alleged spouse. It is therefore clear that "marry" as applied to the second or bigamous marriage in such statutes does not mean to affect a legal marriage, but merely to appear to marry. To constitute a marriage in that sense, it is only necessary that the accused and his alleged bigamous spouse do enough to create the appearance of having married. It is immaterial whether such an alleged marriage is illegal or defective for some other reason in addition to the prior and still existing marriage of the accused. 10 Am. Jur. 2d, Bigamy, § 11, Notes 19, 20, and 1.

[3,4] Usually in the United States today, such appearance of marriage involves going through some sort of ceremony, but the appearance of a common-law marriage -not involving any ceremony-has been held sufficient in jurisdictions which still recognize common.,.law marriages. 10 Am. Jur. 2d, Bigamy, § 11, Notes 16 and 17. In the Trust Territory where marriages under local custom are expressly recognized by Trust Territory Code, Section 694, the court holds that the appearance of a marriage under local custom is sufficient to constitute "marrying" so far as the alleged bigamous marriage is concerned within the peculiar meaning of the word "marry" as used in Section 406 of the Code, even though no marriage ceremony is involved.

[5] In the present case, this court considers that the evidence was amply sufficient to warrant the trial court in finding that the accused and his alleged bigamous spouse purported to marry and did all of the things required of them for a marriage under Palauan custom, which they themselves could do under the circumstances, to make it appear that they were married, even though the accused's relatives did not consent to or acquiesce in the marriage.

In fact, it appears that the accused and his alleged bigamous wife were so successful in creating the appearance of marriage that they were generally considered in their community to be "married" in the peculiar sense in which that word is regularly used in regard to a bigamous marriage.

[6] This court therefore holds that the trial court was justified in finding that the accused did "marry" his alleged bigamous wife in the peculiar sense in which that word is used in Section 406 of the Trust Territory Code, regardless of whether their actions would have constituted a legal marriage if the accused's prior marriage to another woman were not in effect. The court accordingly makes no determination or intimation in this case as to whether actual consent or acquiescence by the man's relatives is or is not necessary for a lawful marriage of a senior male member or male head of a lineage under Palauan custom.

JUDGMENT

The finding and sentence of the Palau District Court in its Criminal Case No. 4576 are affirmed.