

FIRST DIVISION

**[A.M. No. MTJ-00-1329 (formerly A.M. No. OCA
IPI No. 99-706-MTJ), March 08, 2001]**

**HERMINIA BORJA-MANZANO, PETITIONER, VS. JUDGE ROQUE R.
SANCHEZ, MTC, INFANTA, PANGASINAN, RESPONDENT.**

R E S O L U T I O N

DAVIDE JR., C.J.:

The solemnization of a marriage between two contracting parties who were both bound by a prior existing marriage is the bone of contention of the instant complaint against respondent Judge Roque R. Sanchez, Municipal Trial Court, Infanta, Pangasinan. For this act, complainant Herminia Borja-Manzano charges respondent Judge with gross ignorance of the law in a sworn Complaint-Affidavit filed with the Office of the Court Administrator on 12 May 1999.

Complainant avers that she was the lawful wife of the late David Manzano, having been married to him on 21 May 1966 in San Gabriel Archangel Parish, Araneta Avenue, Caloocan City.^[1] Four children were born out of that marriage.^[2] On 22 March 1993, however, her husband contracted another marriage with one Luzviminda Payao before respondent Judge.^[3] When respondent Judge solemnized said marriage, he knew or ought to know that the same was void and bigamous, as the marriage contract clearly stated that both contracting parties were "separated."

Respondent Judge, on the other hand, claims in his Comment that when he officiated the marriage between Manzano and Payao he did not know that Manzano was legally married. What he knew was that the two had been living together as husband and wife for seven years already without the benefit of marriage, as manifested in their joint affidavit.^[4] According to him, had he known that the late Manzano was married, he would have advised the latter not to marry again; otherwise, he (Manzano) could be charged with bigamy. He then prayed that the complaint be dismissed for lack of merit and for being designed merely to harass him.

After an evaluation of the Complaint and the Comment, the Court Administrator recommended that respondent Judge be found guilty of gross ignorance of the law and be ordered to pay a fine of P2,000, with a warning that a repetition of the same or similar act would be dealt with more severely.

On 25 October 2000, this Court required the parties to manifest whether they were willing to submit the case for resolution on the basis of the pleadings thus filed. Complainant answered in the affirmative.

For his part, respondent Judge filed a Manifestation reiterating his plea for the dismissal of the complaint and setting aside his earlier Comment. He therein invites

the attention of the Court to two separate affidavits^[5] of the late Manzano and of Payao, which were allegedly unearthed by a member of his staff upon his instruction. In those affidavits, both David Manzano and Luzviminda Payao expressly stated that they were married to Herminia Borja and Domingo Relos, respectively; and that since their respective marriages had been marked by constant quarrels, they had both left their families and had never cohabited or communicated with their spouses anymore. Respondent Judge alleges that on the basis of those affidavits, he agreed to solemnize the marriage in question in accordance with Article 34 of the Family Code.

We find merit in the complaint.

Article 34 of the Family Code provides:

No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

For this provision on legal ratification of marital cohabitation to apply, the following requisites must concur:

1. The man and woman must have been living together as husband and wife for at least five years before the marriage;
2. The parties must have no legal impediment to marry each other;
3. The fact of absence of legal impediment between the parties must be present at the time of marriage;
4. The parties must execute an affidavit stating that they have lived together for at least five years [and are without legal impediment to marry each other]; and
5. The solemnizing officer must execute a sworn statement that he had ascertained the qualifications of the parties and that he had found no legal impediment to their marriage.^[6]

Not all of these requirements are present in the case at bar. It is significant to note that in their separate affidavits executed on 22 March 1993 and sworn to before respondent Judge himself, David Manzano and Luzviminda Payao expressly stated the fact of their prior existing marriage. Also, in their marriage contract, it was indicated that both were "separated."

Respondent Judge knew or ought to know that a subsisting previous marriage is a diriment impediment, which would make the subsequent marriage null and void.^[7] In fact, in his Comment, he stated that had he known that the late Manzano was married he would have discouraged him from contracting another marriage. And respondent Judge cannot deny knowledge of Manzano's and Payao's subsisting