



Republic of the Philippines  
Supreme Court  
Manila

**THIRD DIVISION**

**MERLINDA  
MONTAÑEZ,**

**CIPRIANO**

**G.R. No. 181089**

Complainant,

**Present:**

VELASCO, JR., J., *Chairperson*,  
LEONARDO-DE CASTRO,\*  
PERALTA,  
ABAD, and  
MENDOZA, JJ.

- versus -

**Promulgated:**

**LOURDES TAJOLOSA CIPRIANO,**  
Respondent.

22 October 2012

X ----- *Macapuno* X

**DECISION**

**PERALTA, J.:**

For our resolution is a petition for review on *certiorari* which seeks to annul the Order<sup>1</sup> dated September 24, 2007 of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, issued in Criminal Case No. 4990-SPL which dismissed the Information for Bigamy filed against respondent Lourdes Tajolosa Cipriano. Also assailed is the RTC Resolution<sup>2</sup> dated January 2, 2008 denying the motion for reconsideration.

\* Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

<sup>1</sup> *Rollo*, pp. 54-55; Per Judge Sonia T. Yu-Casano.

<sup>2</sup> *Id.* at 52-53.

On April 8, 1976, respondent married Socrates Flores (Socrates) in Lezo, Aklan.<sup>3</sup> On January 24, 1983, during the subsistence of the said marriage, respondent married Silverio V. Cipriano (Silverio) in San Pedro, Laguna.<sup>4</sup> In 2001, respondent filed with the RTC of Muntinlupa, Branch 256, a Petition for the Annulment of her marriage with Socrates on the ground of the latter's psychological incapacity as defined under Article 36 of the Family Code, which was docketed as Civil Case No. 01-204. On July 18, 2003, the RTC of Muntinlupa, Branch 256, rendered an Amended Decision<sup>5</sup> declaring the marriage of respondent with Socrates null and void. Said decision became final and executory on October 13, 2003.<sup>6</sup>

On May 14, 2004, petitioner Merlinda Cipriano Montañez, Silverio's daughter from the first marriage, filed with the Municipal Trial Court of San Pedro, Laguna, a Complaint<sup>7</sup> for Bigamy against respondent, which was docketed as Criminal Case No. 41972. Attached to the complaint was an Affidavit<sup>8</sup> (*Malayang Sinumpaang Salaysay*) dated August 23, 2004, thumb-marked and signed by Silverio,<sup>9</sup> which alleged, among others, that respondent failed to reveal to Silverio that she was still married to Socrates. On November 17, 2004, an Information<sup>10</sup> for Bigamy was filed against respondent with the RTC of San Pedro, Laguna, Branch 31. The case was docketed as Criminal Case No. 4990-SPL. The Information reads:

That on or about January 24, 1983, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously contract a second or subsequent marriage with one SILVERIO CIPRIANO VINALON while her first marriage with SOCRATES FLORES has not been judicially dissolved by proper judicial authorities.<sup>11</sup>

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<sup>3</sup> *Id.* at 60.

<sup>4</sup> *Id.* at 62.

<sup>5</sup> *Id.* at 66-68.

<sup>6</sup> *Id.* at 69.

<sup>7</sup> *Id.* at 71.

<sup>8</sup> *Id.* at 72.

<sup>9</sup> Died on May 27, 2007; *id.* At 59.

<sup>10</sup> *Id.* at 75.

<sup>11</sup> *Id.*

On July 24, 2007 and before her arraignment, respondent, through counsel, filed a Motion to Quash Information (and Dismissal of the Criminal Complaint)<sup>12</sup> alleging that her marriage with Socrates had already been declared void *ab initio* in 2003, thus, there was no more marriage to speak of prior to her marriage to Silverio on January 24, 1983; that the basic element of the crime of bigamy, *i.e.*, two valid marriages, is therefore wanting. She also claimed that since the second marriage was held in 1983, the crime of bigamy had already prescribed. The prosecution filed its Comment<sup>13</sup> arguing that the crime of bigamy had already been consummated when respondent filed her petition for declaration of nullity; that the law punishes the act of contracting a second marriage which appears to be valid, while the first marriage is still subsisting and has not yet been annulled or declared void by the court.

In its Order<sup>14</sup> dated August 3, 2007, the RTC denied the motion. It found respondent's argument that with the declaration of nullity of her first marriage, there was no more first marriage to speak of and thus the element of two valid marriages in bigamy was absent, to have been laid to rest by our ruling in *Mercado v. Tan*<sup>15</sup> where we held:

In the instant case, petitioner contracted a second marriage although there was yet no judicial declaration of nullity of his first marriage. In fact, he instituted the Petition to have the first marriage declared void only after complainant had filed a letter-complaint charging him with bigamy. For contracting a second marriage while the first is still subsisting, he committed the acts punishable under Article 349 of the Revised Penal Code.

That he subsequently obtained a judicial declaration of the nullity of the first marriage was immaterial. To repeat, the crime had already been consummated by then. x x x<sup>16</sup>

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<sup>12</sup> *Id.* at 80-81.

<sup>13</sup> *Id.* at 82-83.

<sup>14</sup> *Id.* at 84.

<sup>15</sup> G.R. No. 137110, August 1, 2000, 337 SCRA 122; 391 Phil. 809 (2000).

<sup>16</sup> *Mercado v. Tan*, *supra*, at 133; at 824.

As to respondent's claim that the action had already prescribed, the RTC found that while the second marriage indeed took place in 1983, or more than the 15-year prescriptive period for the crime of bigamy, the commission of the crime was only discovered on November 17, 2004, which should be the reckoning period, hence, prescription has not yet set in.

Respondent filed a Motion for Reconsideration<sup>17</sup> claiming that the *Mercado* ruling was not applicable, since respondent contracted her first marriage in 1976, *i.e.*, before the Family Code; that the petition for annulment was granted and became final before the criminal complaint for bigamy was filed; and, that Article 40 of the Family Code cannot be given any retroactive effect because this will impair her right to remarry without need of securing a declaration of nullity of a completely void prior marriage.

On September 24, 2007, the RTC issued its assailed Order,<sup>18</sup> the dispositive portion of which reads:

Wherefore, the Order of August 3, 2007 is reconsidered and set aside. Let a new one be entered quashing the information. Accordingly, let the instant case be DISMISSED.

SO ORDERED.

In so ruling, the RTC said that at the time the accused had contracted a second marriage on January 24, 1983, *i.e.*, before the effectivity of the Family Code, the existing law did not require a judicial declaration of absolute nullity as a condition precedent to contracting a subsequent marriage; that jurisprudence before the Family Code was ambivalent on the issue of the need of prior judicial declaration of absolute nullity of the first marriage. The RTC found that both marriages of respondent took place before the effectivity of the Family Code, thus, considering the unsettled state of jurisprudence on the need for a prior declaration of absolute nullity

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<sup>17</sup> *Rollo*, pp. 85-87.

<sup>18</sup> *Id.* at 88-89.

of marriage before commencing a second marriage and the principle that laws should be interpreted liberally in favor of the accused, it declared that the absence of a judicial declaration of nullity should not prejudice the accused whose second marriage was declared once and for all valid with the annulment of her first marriage by the RTC of Muntinlupa City in 2003.

Dissatisfied, a Motion for Reconsideration was filed by the prosecution, but opposed by respondent. In a Resolution dated January 2, 2008, the RTC denied the same ruling, among others, that the judicial declaration of nullity of respondent's marriage is tantamount to a mere declaration or confirmation that said marriage never existed at all, and for this reason, her act in contracting a second marriage cannot be considered criminal.

Aggrieved, petitioner directly filed the present petition with us raising the following issues:

I. Whether the judicial nullity of a first marriage prior to the enactment of the Family Code and the pronouncement in *Wiegel vs. Sempio-Diy* on the ground of psychological incapacity is a valid defense for a charge of bigamy for entering into a second marriage prior to the enactment of the Family Code and the pronouncement in *Wiegel vs. Sempio-Diy*?

II. Whether the trial court erred in stating that the jurisprudence prior to the enactment of the Family Code and the pronouncement in *Wiegel vs. Sempio-Diy* regarding the necessity of securing a declaration of nullity of the first marriage before entering a second marriage ambivalent, such that a person was allowed to enter a subsequent marriage without the annulment of the first without incurring criminal liability.<sup>19</sup>

Preliminarily, we note that the instant petition assailing the RTC's dismissal of the Information for bigamy was filed by private complainant and not by the Office of the Solicitor General (OSG) which should represent the government in all judicial proceedings filed before us.<sup>20</sup>

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<sup>19</sup> *Id.* at 8-9.

<sup>20</sup> Section 35, Chapter 12, Title III of Book IV of the 1987 Administrative Code provides:

Notwithstanding, we will give due course to this petition as we had done in the past. In *Antone v. Beronilla*,<sup>21</sup> the offended party (private complainant) questioned before the Court of Appeals (CA) the RTC's dismissal of the Information for bigamy filed against her husband, and the CA dismissed the petition on the ground, among others, that the petition should have been filed in behalf of the People of the Philippines by the OSG, being its statutory counsel in all appealed criminal cases. In a petition filed with us, we said that we had given due course to a number of actions even when the respective interests of the government were not properly represented by the OSG and said:

In *Labaro v. Panay*, this Court dealt with a similar defect in the following manner:

It must, however, be stressed that if the public prosecution is aggrieved by any order ruling of the trial judge in a criminal case, the OSG, and not the prosecutor, must be the one to question the order or ruling before us. x x x

Nevertheless, **since the challenged order affects the interest of the State or the plaintiff People of the Philippines, we opted not to dismiss the petition on this technical ground.** Instead, we required the OSG to comment on the petition, as we had done before in some cases. In light of its Comment, we rule that the OSG has ratified and adopted as its own the instant petition for the People of the Philippines. (Emphasis supplied)<sup>22</sup>

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Sec. 35. *Powers and Functions.* - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. xxx It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

As an exception to this rule, the Solicitor General is allowed to:

(8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.

<sup>21</sup> G.R. No. 183824, December 8, 2010, 637 SCRA 615.

<sup>22</sup> *Antone v. Beronilla*, *supra*, at 623.

Considering that we also required the OSG to file a Comment on the petition, which it did, praying that the petition be granted in effect, such Comment had ratified the petition filed with us.

As to the merit of the petition, the issue for resolution is whether or not the RTC erred in quashing the Information for bigamy filed against respondent.

Article 349 of the Revised Penal Code defines and penalizes bigamy as follow:

Art. 349. *Bigamy.* – The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The elements of the crime of bigamy are: (a) the offender has been legally married; (b) the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (c) that he contracts a second or subsequent marriage; and (d) the second or subsequent marriage has all the essential requisites for validity. The felony is consummated on the celebration of the second marriage or subsequent marriage.<sup>23</sup> It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage.<sup>24</sup>

In this case, it appears that when respondent contracted a second marriage with Silverio in 1983, her first marriage with Socrates celebrated in 1976 was still subsisting as the same had not yet been annulled or declared void by a competent authority. Thus, all the elements of bigamy were

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<sup>23</sup> *Manuel v. People*, G.R. No. 165842, November 29, 2005, 476 SCRA 461, 477; 512 Phil. 818, 833-834 (2005).

<sup>24</sup> *Id.* at 833.

alleged in the Information. In her Motion to Quash the Information, she alleged, among others, that:

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2. The records of this case would bear out that accused's marriage with said Socrates Flores was declared void *ab initio* on 14 April 2003 by Branch 256 of the Regional Trial Court of Muntinlupa City. The said decision was never appealed, and became final and executory shortly thereafter.
3. In other words, before the filing of the Information in this case, her marriage with Mr. Flores had already been declared void from the beginning.
4. There was therefore no marriage prior to 24 January 1983 to speak of. In other words, there was only one marriage.
5. The basic element of the crime of bigamy, that is, two valid marriages, is therefore wanting.<sup>25</sup>

Clearly, the annulment of respondent's first marriage on the ground of psychological incapacity was declared only in 2003. The question now is whether the declaration of nullity of respondent's first marriage justifies the dismissal of the Information for bigamy filed against her.

We rule in the negative.

In *Mercado v. Tan*,<sup>26</sup> we ruled that the subsequent judicial declaration of the nullity of the first marriage was immaterial, because prior to the declaration of nullity, the crime of bigamy had already been consummated. And by contracting a second marriage while the first was still subsisting, the accused committed the acts punishable under Article 349 of the Revised Penal Code.

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<sup>25</sup> *Rollo*, p. 80.

<sup>26</sup> *Supra* note 15, at 133; at 824.



In *Abunado v. People*,<sup>27</sup> we held that what is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.<sup>28</sup> Even if the accused eventually obtained a declaration that his first marriage was void *ab initio*, the point is, both the first and the second marriage were subsisting before the first marriage was annulled.<sup>29</sup>

In *Tenebro v. CA*,<sup>30</sup> we declared that although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the *vinculum* between the spouses is concerned, it is significant to note that said marriage is not without legal effects. Among these effects is that children conceived or born before the judgment of absolute nullity of the marriage shall be considered legitimate. There is, therefore, a recognition *written into the law itself* that such a marriage, although void *ab initio*, may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment.<sup>31</sup>

And in *Jarillo v. People*,<sup>32</sup> applying the foregoing jurisprudence, we affirmed the accused's conviction for bigamy, ruling that the moment the accused contracted a second marriage without the previous one having been judicially declared null and void, the crime of bigamy was already consummated because at the time of the celebration of the second marriage,

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<sup>27</sup> G.R. No. 159218, March 30, 2004, 426 SCRA 562.

<sup>28</sup> *Id.* at 568

<sup>29</sup> *Id.*

<sup>30</sup> G.R. No. 150758, February 18, 2004, 423 SCRA 272; 467 Phil. 723 (2004).

<sup>31</sup> *Id.* at 284; at 744.

<sup>32</sup> G.R. No. 164435, September 29, 2009, 601 SCRA 236.

the accused's first marriage which had not yet been declared null and void by a court of competent jurisdiction was deemed valid and subsisting.

Here, at the time respondent contracted the second marriage, the first marriage was still subsisting as it had not yet been legally dissolved. As ruled in the above-mentioned jurisprudence, the subsequent judicial declaration of nullity of the first marriage would not change the fact that she contracted the second marriage during the subsistence of the first marriage. Thus, respondent was properly charged of the crime of bigamy, since the essential elements of the offense charged were sufficiently alleged.

Respondent claims that *Tenebro v. CA*<sup>33</sup> is not applicable, since the declaration of nullity of the previous marriage came after the filing of the Information, unlike in this case where the declaration was rendered before the information was filed. We do not agree. What makes a person criminally liable for bigamy is when he contracts a second or subsequent marriage during the subsistence of a valid marriage.

Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists.<sup>34</sup> Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy.<sup>35</sup>

Anent respondent's contention in her Comment that since her two marriages were contracted prior to the effectivity of the Family Code, Article 40 of the Family Code cannot be given retroactive effect because this

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<sup>33</sup> *Supra* note 30.

<sup>34</sup> *Landicho v. Relova*, G.R. No. L-22579, February 23, 1968, 22 SCRA 731, 734; 130 Phil. 745, 748 (1968).

<sup>35</sup> *Id.*

will impair her right to remarry without need of securing a judicial declaration of nullity of a completely void marriage.

We are not persuaded.

In *Jarillo v. People*,<sup>36</sup> where the accused, in her motion for reconsideration, argued that since her marriages were entered into before the effectivity of the Family Code, then the applicable law is Section 29 of the Marriage Law (Act 3613),<sup>37</sup> instead of Article 40 of the Family Code, which requires a final judgment declaring the previous marriage void before a person may contract a subsequent marriage. We did not find the argument meritorious and said:

As far back as 1995, in *Atienza v. Brillantes, Jr.*, the Court already made the declaration that Article 40, which is a rule of procedure, should be applied retroactively because Article 256 of the Family Code itself provides that said "Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights." The Court went on to explain, thus:

The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. The reason is that as a general rule, no vested right may attach to, nor arise from, procedural laws.

In *Marbella-Bobis v. Bobis*, the Court pointed out the danger of not enforcing the provisions of Article 40 of the Family Code, to wit:

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<sup>36</sup> G.R. No. 164435, June 29, 2010, 622 SCRA 24.

<sup>37</sup> Section 29 of Act No. 3613 (Marriage Law), which provided:

*Illegal marriages.* — Any marriage subsequently contracted by any person during the lifetime of the first spouse shall be illegal and void from its performance, unless:

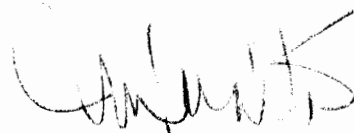
(a) The first marriage was annulled or dissolved;

(b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage as contracted being valid in either case until declared null and void by a competent court.

In the case at bar, respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite - usually the marriage license - and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provision on bigamy.<sup>38</sup>

**WHEREFORE**, considering the foregoing, the petition is **GRANTED**. The Order dated September 24, 2007 and the Resolution dated January 2, 2008 of the Regional Trial Court of San Pedro, Laguna, Branch 31, issued in Criminal Case No. 4990-SPL, are hereby **SET ASIDE**. Criminal Case No. 4990-SPL is ordered **REMANDED** to the trial court for further proceedings.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

<sup>38</sup>

*Jarillo v. People*, *supra* note 36, at 25-26. (Citation omitted)

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Roberto A. Abad*  
**ROBERTO A. ABAD**  
Associate Justice

*Jose Catral Mendoza*  
**JOSE CATRAL MENDOZA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

*Presbitero J. Velasco, Jr.*  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

*Maria Lourdes P. A. Sereno*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice