



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JAMES WALTER P. CAPILI,
Petitioner.

G.R. No. 183805

Present:

- versus -

VELASCO, JR., J., Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

PEOPLE OF THE PHILIPPINES
and SHIRLEY TISMO-CAPILI,
Respondents.

Promulgated:

JUL 03 2013

[Signature]

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DECISION

PERALTA, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision¹ dated February 1, 2008 and Resolution² dated July 24, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 30444.

The factual antecedents are as follows:

On June 28, 2004, petitioner was charged with the crime of bigamy before the Regional Trial Court (RTC) of Pasig City in an Information which reads:

On or about December 8, 1999, in Pasig City, and within the jurisdiction of this Honorable Court, the accused being previously united

¹ Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; *rollo*, pp. 44-54.

² *Id.* at 56-57.

in lawful marriage with Karla Y. Medina-Capili and without said marriage having been legally dissolved or annulled, did then and there willfully, unlawfully and feloniously contract a second marriage with Shirley G. Tismo, to the damage and prejudice of the latter.

Contrary to law.³

Petitioner thereafter filed a Motion to Suspend Proceedings alleging that: (1) there is a pending civil case for declaration of nullity of the second marriage before the RTC of Antipolo City filed by Karla Y. Medina-Capili; (2) in the event that the marriage is declared null and void, it would exculpate him from the charge of bigamy; and (3) the pendency of the civil case for the declaration of nullity of the second marriage serves as a prejudicial question in the instant criminal case.

Consequently, the arraignment and pre-trial were reset by the RTC of Pasig City, in view of the filing of the Motion to Suspend Proceedings filed by petitioner.

In the interim, the RTC of Antipolo City rendered a decision declaring the voidness or incipient invalidity of the second marriage between petitioner and private respondent on the ground that a subsequent marriage contracted by the husband during the lifetime of the legal wife is void from the beginning.

Thereafter, the petitioner accused filed his Manifestation and Motion (to Dismiss) praying for the dismissal of the criminal case for bigamy filed against him on the ground that the second marriage between him and private respondent had already been declared void by the RTC.

In an Order⁴ dated July 7, 2006, the RTC of Pasig City granted petitioner's Manifestation and Motion to Dismiss, to wit:

The motion is anchored on the allegation that this case should be dismissed as a decision dated December 1, 2004 had already been rendered by the Regional Trial Court of Antipolo City, Branch 72 in Civil Case No. 01-6043 (entitled: "Karla Medina-Capili versus James Walter P. Capili and Shirley G. Tismo," a case for declaration of nullity of marriage) nullifying the second marriage between James Walter P. Capili and Shirley G. Tismo and said decision is already final.

In the opposition filed by the private prosecutor to the motion, it was stated, among others, that the issues raised in the civil case are not similar or intimately related to the issue in this above-captioned case and

³ Records, p. 1.

⁴ Rollo, p. 58.

that the resolution of the issues in said civil case would not determine whether or not the criminal action may proceed.

WHEREFORE, after a judicious evaluation of the issue and arguments of the parties, this Court is of the humble opinion that there is merit on the Motion to dismiss filed by the accused as it appears that the second marriage between James Walter P. Capili and Shirley G. Tismo had already been nullified by the Regional Trial Court, Branch 72 of Antipolo City which has declared “the voidness, non-existent or incipient invalidity” of the said second marriage. As such, this Court submits that there is no more bigamy to speak of.

SO ORDERED.

Aggrieved, private respondent filed an appeal before the CA.

Thus, in a Decision⁵ dated February 1, 2008, the CA reversed and set aside the RTC’s decision. The *fallo* reads:

WHEREFORE, premises considered, the Order dated 07 July 2006 of the Regional Trial Court of Pasig City, Branch 152 in Crim. Case No. 128370 is **REVERSED** and **SET ASIDE**. The case is remanded to the trial court for further proceedings. No costs.

SO ORDERED.⁶

Petitioner then filed a Motion for Reconsideration against said decision, but the same was denied in a Resolution⁷ dated July 24, 2008.

Accordingly, petitioner filed the present petition for review on *certiorari* alleging that:

1. THERE IS NO LEGAL BASIS FOR THE COURT OF APPEALS TO DISREGARD EXISTING JURISPRUDENCE PRONOUNCED BY THIS HONORABLE SUPREME COURT AND TO REVERSE THE ORDER DATED JULY 7, 2006 OF THE TRIAL COURT (REGIONAL TRIAL COURT, PASIG CITY, BRANCH 152) ISSUED IN CRIMINAL CASE NO. 128370 GRANTING THE MOTION TO DISMISS THE CASE OF BIGAMY AGAINST PETITIONER, INASMUCH AS THE ISSUANCE OF THE SAID ORDER IS BASED ON THE FINDINGS AND/OR FACTS OF THE CASE IN THE DECISION OF THE REGIONAL TRIAL COURT OF ANTIPOLLO CITY, BRANCH 72, IN CIVIL CASE NO. 01-6043 AND THE CONCLUDING AND DISPOSITIVE PORTION IN THE SAID DECISION WHICH STATES THAT, AFTER PERUSAL OF

⁵ *Id.* at 44-54.

⁶ *Id.* at 52. (Emphasis in the original)

⁷ *Id.* at 56-57.

THE EVIDENCE ON RECORD AND THE TESTIMONIES OF WITNESSES x x x, THE MARRIAGE BETWEEN PETITIONER JAMES WALTER P. CAPILI AND PRIVATE RESPONDENT SHIRLEY G. TISMO, IS HEREBY NULL AND VOID.

2. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT THE DECLARATION OF NULLITY OF MARRIAGE BETWEEN PETITIONER JAMES WALTER P. CAPILI AND SHIRLEY G. TISMO BY THE REGIONAL TRIAL COURT OF ANTIPOLO CITY, BRANCH 72 IN ITS DECISION IN CIVIL CASE NO. 01-6043, IS ON THE GROUND THAT IT IS BIGAMOUS IN NATURE, DESPITE THE ABSENCE OF ANY SUCH FINDINGS OR FACTS ON WHICH IT IS BASED IN VIOLATION OF ARTICLE VIII, SECTION 14 OF THE 1987 CONSTITUTION, AND IN CONCLUDING THAT THE SAID DECLARATION OF NULLITY OF MARRIAGE IS NOT A GROUND FOR DISMISSAL OF THE BIGAMY CASE AGAINST THE PETITIONER, WHICH RULING IS NOT IN ACCORDANCE WITH THE FACTS OF THE CASE OF THE SAID DECISION AND WHICH IS CONTRARY TO APPLICABLE LAWS AND ESTABLISHED JURISPRUDENCE.
3. THE CASE OF TENEBRO V. COURT OF APPEALS SPEAKS FOR ITSELF. IT IS AN EXCEPTION TO EXISTING JURISPRUDENCE INVOLVING DECLARATION OF NULLITY OF MARRIAGE AND IS APPLICABLE ONLY TO THE SET OF FACTS IN THE SAID CASE, AND THE GROUND FOR DECLARATION OF NULLITY OF MARRIAGE IS PSYCHOLOGICAL INCAPACITY, HENCE, THERE IS NO LEGAL BASIS FOR ABANDONING EXISTING JURISPRUDENCE AS WHERE IN THE INSTANT CASE THE GROUND FOR DECLARATION OF NULLITY OF MARRIAGE IS VIOLATIVE OF ARTICLE 3 IN RELATION TO ARTICLE 4 OF THE FAMILY CODE.
4. THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE USE BY RESPONDENT SHIRLEY G. TISMO OF THE SURNAME "CAPILI" IS ILLEGAL INASMUCH AS THE DECISION OF THE REGIONAL TRIAL COURT OF ANTIPOLO CITY, BRANCH 72 IN CIVIL CASE NO. 01-6043 DECLARING NULL AND VOID THE MARRIAGE BETWEEN JAMES WALTER P. CAPILI AND SHIRLEY G. TISMO HAD LONG BECOME FINAL AND UNAPPEALABLE AS OF THE DATE OF THE SAID DECISION ON DECEMBER 1, 2004 AND DULY RECORDED IN THE RECORDS OF ENTRIES IN THE CORRESPONDING BOOK IN THE OFFICE OF THE CIVIL REGISTRAR OF PASIG CITY AND THE NATIONAL STATISTICS OFFICE.⁸

⁸*Id.* at 20.

In essence, the issue is whether or not the subsequent declaration of nullity of the second marriage is a ground for dismissal of the criminal case for bigamy.

We rule in the negative.

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

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, therefore, are: (1) the offender has been legally married; (2) 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; (3) that he contracts a second or subsequent marriage; and (4) that the second or subsequent marriage has all the essential requisites for validity.⁹

In the present case, it appears that all the elements of the crime of bigamy were present when the Information was filed on June 28, 2004.

It is undisputed that a second marriage between petitioner and private respondent was contracted on December 8, 1999 during the subsistence of a valid first marriage between petitioner and Karla Y. Medina-Capili contracted on September 3, 1999. Notably, the RTC of Antipolo City itself declared the bigamous nature of the second marriage between petitioner and private respondent. Thus, the subsequent judicial declaration of the second marriage for being bigamous in nature does not bar the prosecution of petitioner for the crime of bigamy.

Jurisprudence is replete with cases holding that the accused may still be charged with the crime of bigamy, even if there is a subsequent declaration of the nullity of the second marriage, so long as the first marriage was still subsisting when the second marriage was celebrated.

In *Jarillo v. People*,¹⁰ the Court affirmed the accused's conviction for bigamy ruling that the crime of bigamy is consummated on the celebration

⁹ *Mercado v. Tan*, 391 Phil. 809, 818-819 (2000).

¹⁰ G.R. No. 164435, September 29, 2009, 601 SCRA 236.

of the subsequent marriage without the previous one having been judicially declared null and void, *viz.*:

The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated. Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.

The outcome of the civil case for annulment of petitioner's marriage to [private complainant] had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.

Thus, under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding. In this case, even if petitioner 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.¹¹

In like manner, the Court recently upheld the ruling in the aforementioned case and ruled that what makes a person criminally liable for bigamy is when he contracts a second or subsequent marriage during the subsistence of a valid first marriage. It further held that the 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. Therefore, he who contracts a second marriage before the judicial declaration of the first marriage assumes the risk of being prosecuted for bigamy.¹²

Finally, it is a settled rule that the criminal culpability attaches to the offender upon the commission of the offense, and from that instant, liability appends to him until extinguished as provided by law.¹³ It is clear then that the crime of bigamy was committed by petitioner from the time he contracted the second marriage with private respondent. Thus, the finality of the judicial declaration of nullity of petitioner's second marriage does not impede the filing of a criminal charge for bigamy against him.

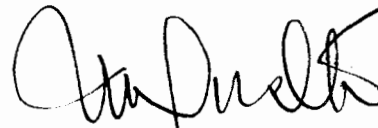
¹¹ *Id.* at 245-246. (Emphasis in the original.)

¹² *Merlinda Cipriano Montañez v. Lourdes Tajolosa Cipriano*, G.R. No. 181089, October 22, 2012.

¹³ *Teves v. People*, G.R. No. 188775, August 24, 2011, 656 SCRA 307, 314.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated February 1, 2008 and Resolution dated July 24, 2008 of the Court of Appeals in CA-G.R. CR No. 30444 are hereby **AFFIRMED**.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson



ROBERTO A. ABAD
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

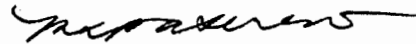
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
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**

Chief Justice