

**ALFREDO JAVIER, PETITIONER VS. HON. ANTONIO G. LUCERO,
JUDGE OF THE COURT OF FIRST INSTANCE OF CAVITE; SALUD R.
ARCA AND ALFREDO JAVIER, JR., RESPONDENTS.**

G.R. No. L-6706. March 29, 1954

Ponente: BENGZON, J.

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BENGZON, J.:

In an action for alimony (Civil Case No. 5150, Cavite), the respondent judge, after hearing the parties and their evidence, ordered Alfredo Javier to give a monthly allowance of P60 to his wife Salud R. Area and their son Alfredo Javier Jr.

On April 14, 1953 the husband filed a notice of appeal, and on May 6, 1953, he submitted the appeal bond and the record on appeal. Meanwhile the wife and the son presented on April 30, 1953 a motion for "support pendente lite" "even pending the final determination of the case on appeal". Whereupon on May 8, 1953, the judge directed Alfredo Javier to pay the monthly pensions notwithstanding the pendency of his appeal.

Here comes Alfredo Javier with a petition for certiorari challenging such directive and arguing, in his own words:

- "1. The status of Salud R. Area as wife of the petitioner is being contested;
- "2. Alfredo Javier Jr. is over 21 years on March 31, 1953 and no longer entitled to be supported; and
- "3. Even granting that Alfredo Javier, Jr. is entitled to support even if over 21 years of age to complete his education or training for some profession, trade or vocation, the support could not be paid because the decision is vague or silent on that point."

The facts, as found in the action for support, are these:

"On November 19, 1937, plaintiff Salud R. Area and defendant Alfredo Javier had their marriage solemnized by Judge Mariano Nable of the Municipal Court of Manila. At the time of their marriage, they had already begotten a son named Alfredo Javier Junior who was born on December 2, 1931. Sometime in 1938, defendant Alfredo Javier left for the United States on board a ship of the United States Navy, for it appears that he had joined the United States Navy since 1927, such that at the time of his marriage with plaintiff Salud R. Area, defendant Alfredo Javier was already an enlisted man in the United States Navy. Because of defendant Alfredo Javier's departure for the United States in 1938, his wife Salud R. Area, who is from Tanza, Cavite, chose to live with defendant's parents at Naic, Cavite. But for certain incompatibility of character (frictions having occurred between plaintiff Salud R. Area and defendant's folks) plaintiff Salud R. Area had found it necessary to leave defendant's parents' abode and transfer her residence to Tanza, Cavite—her native place. Since then the relation between plaintiff Salud R. Area and defendant Alfredo Javier became strained such that on August 13, 1940 defendant Alfredo Javier brought an action for divorce against plaintiff Salud R. Area before the Circuit Court of Mobile County, State of Alabama, USA, docketed as Civil Case No. 14313 of that Court and marked as Exhibit 2(c) in this case. Having received a copy of the complaint for divorce on September 23, 1940, plaintiff Salud R. Area—answering the complaint—alleged in her answer that she received copy of the

complaint on September 23, 1940 although she was directed to file her answer thereto on or before September 13, 1940. In that answer she filed, plaintiff Salud R. Area averred among other things that defendant Alfredo Javier was not a resident of Mobile County, State of Alabama, for the period of twelve months preceding the institution of the complaint, but that he was a resident of Naic, Cavite, Philippines. Another averment of interest, which is essential to relate here, is that under paragraph 5 of her answer to the complaint for divorce, Salud R. Area alleged that it was not true that the cause of their separation was desertion on her part but that if the defendant Alfredo Javier was in the United States at that time and she was not with him then it was because he was in active duty as an enlisted man of the United States Navy, as a consequence of which he had to leave for the United States without her. She further alleged that since his departure from the Philippines for the United States, he had always supported her and her co-plaintiff Alfredo Javier Junior through allotments made by the Navy Department of the United States Government. She denied, furthermore, the allegation that she had abandoned defendant's home at Naic, Cavite, and their separation was due to physical impossibility for they were separated by about 10,000 miles from each other. At this juncture, under the Old Civil Code, the wife is not bound to live with her husband if the latter has gone to ultra-marine colonies. Plaintiff Salud R. Area, in her answer to the complaint for divorce by defendant Alfredo Javier, prayed that the complaint for divorce be dismissed. However, notwithstanding Salud R. Area's averments in her answer, contesting the jurisdiction of the Circuit Court of Mobile County, State of Alabama, to take cognizance of the divorce proceeding filed by defendant Alfredo Javier, as shown by her answer marked Exhibit 2(d), nevertheless the Circuit Court of Mobile County rendered judgment decreeing dissolution of the marriage of Salud R. Area and Alfredo Javier, and granting the latter a decree of divorce dated April 9, 1941, a certified copy of which is marked Exhibit 2(f). Thereupon, the evidence discloses that some time in 1946 defendant Alfredo Javier returned to the Philippines but went back to the United States.

In July, 1941—that is after securing a divorce from plaintiff Salud R. Area on April 9, 1941—defendant Alfredo Javier married Thelma Francis, an American citizen, and bought a house and lot at 248 Brooklyn, New York City. In 1949, Thelma Francis, defendant's American wife, obtained a divorce from him for reasons not disclosed by the evidence, and, later on, having retired from the United States Navy, defendant Alfredo Javier returned to the Philippines, arriving here on February 13, 1950. After his arrival in the Philippines, armed with two decrees of divorce—one against his first wife Salud R. Area and the other against him by his second wife Thelma Francis—issued by the Circuit Court of Mobile County, State of Alabama, USA, defendant Alfredo Javier married Maria Odvina before Judge Natividad Almeda-Lopez of the Municipal Court of Manila on April 19, 1950, marked Exhibit 2(b).

At the instance of plaintiff Salud R. Area an information for bigamy was filed by the City Fiscal of Manila on July 25, 1950 against defendant Alfredo Javier with the Court of First Instance of Manila, docketed as Criminal Case No. 13310 and marked Exhibit 2(a). However, defendant Alfredo Javier was acquitted of the charge of bigamy in a decision rendered by the Court of First Instance of Manila through Judge Alejandro J. Panlilio, dated August 10, 1951, predicated on the proposition that the marriage of defendant Alfredo Javier with Maria Odvina was made in all good faith and in the honest belief that his first marriage with plaintiff Salud R. Area had been legally dissolved by the decree of divorce obtained by him from the Circuit Court of Mobile County, State of Alabama, USA, which had the legal effect of dissolving the marital ties between defendant Alfredo Javier and plaintiff Salud R. Area. At this juncture, again, it is this Court's opinion that defendant Alfredo Javier's acquittal in that Criminal Case No. 13310 of the Court of First Instance of Manila by Judge Panlilio was due to the fact that the accused had no criminal intent in contracting "a second or subsequent marriage while his first marriage was still subsisting."

Turning now to the petition for certiorari, we perceive that, as to its first ground the respondent judge declared in his decision that Alfredo Javier and Salud Arca were married on November 19, 1937 when they had already a natural son named Alfredo Javier Junior, born December 2, 1931, and that, notwithstanding a decree of divorce which the husband Alfredo obtained in the United States in 1941, their marriage still subsists. Such being the

situation, the principle in *Francisco vs. Zandueta*, 61 Phil., 752 on which petitioner entirely relies is not controlling, inasmuch as the existence of the married relation and the paternity had been established at least prima facie (cf. *Sanchez vs. Zulueta*, 68 Phil., 112.) Besides, as respondents point out, this is strictly not alimony pendente lite, under Rule 63, but execution of judgment pending appeal, under Rule 39.[1]

In connection with the second ground of the petition, respondents observe that under the new Civil Code, article 290 support also includes the education of the person to be supported "until he complete his education or training for some profession, trade or vocation even beyond the age of majority" and on the basis of this article support was granted to Alfredo Javier Junior. Said the Court, "while it is true that plaintiff Alfredo Javier Junior, who was born on December 2, 1931, has reached the age of majority on December 2, 1952, yet, under the last part of article 290 of the new Civil Code, support may be given him even beyond the age of majority in order to enable him to complete his education, for some trade or profession."

Now then, was the order issued in excess of jurisdiction or with grave abuse of discretion? The court undoubtedly had jurisdiction, inasmuch as it was issued before the record on appeal was submitted. (*Sumulong vs. Imperial*, 51 Phil., 251; *Syquia vs. Concepcion*, 60 Phil., 186). Did the judge abuse his discretion?

Unquestionably, Alfredo Javier Jr. is the son of petitioner Alfredo Javier, and if financial assistance is to be rendered only at the termination of the appeal his education, or the completion thereof, would be unduly delayed. That is good reason for immediate execution. Petitioner claims that according to the records Alfredo Javier Jr. "is no longer studying". Yet probably he stopped going to school due to lack of means, since the petitioner himself admits that his son is just a pre-law graduate.

But the real grievance of petitioner is contained in the last portion of his pleading, which says, "What Alfredo Javier now tries to avoid is to support a woman who has desperately tried to put him in jail, when she accused him of bigamy." Such disgust is easily understandable. But compliance with legal and contractual duties is not always pleasant.

Under the New Civil Code articles 303 and 921 the wife forfeits her husband's support after "she has accused (him) of a crime for which the law prescribes imprisonment for six years or more, and the accusation has been found to be false." If bigamy is such a crime, and if her accusation had been found to be false, Salud Arca would lose her privilege. But the accusation was not "found to be false". Admittedly, he married a third time without the first marriage having been dissolved; but he was cleared of the bigamy charge for lack of criminal intent, inasmuch as he believed his divorce obtained in the U. S., had already ended his first marriage to Salud R. Area. Such acquittal is no different from an acquittal on reasonable doubt, which in our opinion, and in the opinion of a member of the Code Commission that framed the New Civil Code, would not be ground to forfeit her right to support.[2]

Of course, the question whether Alfredo Javier's prosecution for bigamy and subsequent acquittal extinguished his obligation to maintain his complaining spouse will definitely be decided when the main case (No. 5150) is reviewed on appeal. Other aspects of the issue could then undoubtedly be the subject of research and elucidation. Nevertheless we briefly explain our first impressions or provisional conclusion in the task of examining the alleged misuse by respondent judge of his prerogatives. It is markworthy that the son has not forfeited his right to support.

As the issues are presently framed, petitioner has failed to sustain the burden of demonstrating the judge's clear error or grievous mistake in ordering execution of his judgment pending appeal. Costs against petitioner.

Paras, C. J., Pablo, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion and Diokno, JJ., concur.

[1] (Moran, 1952 Ed., Vol. 2, p. 117).

[2] Capistrano, Civil Code Vol. II p. 419, 423.

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