

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO2 ROMEO CACATIAN, ACCUSED-APPELLANT.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Addressed here is an Appeal[1] filed under Rule 41 of the Rules of Court assailing the Decision[2] dated May 25, 2009 of the Regional Trial Court (“trial court” for brevity), Branch 77 of Quezon City in Criminal Case No. Q-05-136250, for “Bigamy.”

The conviction of accused-appellant SPO2 Romeo C. Cacatian (“accused-appellant” for brevity) stemmed from an Information[3] dated June 7, 2005 that read as follows:

“That on or about the 8[th] day of September, 2002, in Quezon City, Philippines, the above-named accused, being then legally married to one FLORENDA CACATIAN, on July 19, 1977, and while said marriage has not yet been legally dissolved and still subsisting, did, then and there willfully, unlawfully and feloniously, contract a second marriage with one MARILOU DAYDAY, which subsequent marriage has all the essential requisites for validity, to the damage and prejudice of said FLORENDA CACATIAN.

CONTRARY TO LAW.”[4] (Emphasis was made in the original)

The prosecution presented two (2) witnesses, namely: private complainant Florenda Cacatian (“private complainant Florenda” or “private complainant” for brevity) and Maria Victoria Delfin (“Delfin” for brevity), a representative of the National Statistics Office (“NSO” for brevity), in order to establish the following:

On July 19, 1977[5], private complainant married accused-appellant before the “sala of Judge Llanes”[6]. The marriage was evidenced by a Marriage Contract with Registry No. 427 (G-77) issued by the NSO to prove that private complainant was the wife of accused-appellant.[7] On May 9, 1983, private complainant and accused-appellant had their wedding ceremony in a church.[8]

The couple cohabited as husband and wife from 1977 to 1987, and their marriage produced six (6) children.[9] However, on 1987, accused-appellant abandoned private complainant and their children. Accused-appellant returned only in 1989[10].

On September 28, 2002, accused-appellant married Marilou Dayday (“Dayday” for brevity).[11] Eventually, accused-appellant and Dayday had four (4) children.[12]

Delfin, as the Registration Officer of the NSO, testified that there were two (2) separate marriages contracted by accused-appellant based on the files of the National Indices of Marriages of the Office of the Civil Registrar General in the NSO.[13]

The defense, on the other hand, presented two (2) witnesses, namely, accused-appellant and Roda Cacatian-Combis, in order to prove the following:

Accused-appellant said he knew private complainant because she was his friend, but denied that she was his

wife.[14] According to accused-appellant, private complainant was his live-in partner from 1977.[15]

On April 1987, private complainant abandoned accused-appellant and their children.[16]

Accused-appellant knew Dayday as his other live-in partner. Accused-appellant's relationship with Dayday ended in 2005.[17]

Accused-appellant denied having been married to private complainant and to Dayday.[18]

An Information[19] for Bigamy dated June 7, 2005 was filed against accused-appellant.

Accused-appellant pleaded "NOT GUILTY."[20]

On January 25, 2008, the Regional Trial Court of Quezon City, Branch 225 rendered a Decision[21] granting the Petition for Nullity of Marriage filed by Dayday against accused-appellant.[22]

On May 25, 2009, accused-appellant was eventually found guilty of Bigamy by the trial court in its Decision[23]. The dispositive portion of the Decision[24] read:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of bigamy, without the attendance of any mitigating or aggravating circumstances, the Court hereby imposes upon him a penalty of imprisonment ranging from TWO (2) YEARS AND FIVE (5) MONTHS of prision correccional in its medium period, as minimum, up to EIGHT (8) YEARS AND FIVE (5) DAYS of prision mayor in its medium period, as maximum. With costs against the accused.

SO ORDERED."[25] (Emphasis was made in the original)

After accused-appellant's Motion for Reconsideration and/or Motion for New Trial[26] was denied by the RTC in its Order[27] of February 11, 2010, accused-appellant filed the Appeal[28] at bench praying that "the Decision of the trial court be reversed and that another decision be rendered by this Honorable Court of Appeals acquitting accused-appellant Romeo S. Cacatian of the crime of Bigamy, with costs de oficio."[29]

Accused-appellant asserted the following assignment of errors:

"I

THE LOWER COURT ERRED IN HOLDING THAT THE ACCUSED CONTRACTED TWO MARRIAGES.

II

THE LOWER COURT ERRED IN HOLDING THAT THE ACCUSED FAILED TO PROVE THE NULLITY OF THE MARRIAGES.

III

THE LOWER COURT ERRED IN HOLDING THAT ANY DOUBT SHOULD BE RESOLVED IN FAVOR OF MARRIAGE.

IV

THE LOWER COURT ERRED IN EMPLOYING THE RULES OF COURT IN PRESUMPTION OF VALIDITY OF MARRIAGE.

V

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE

DOUBT OF BIGAMY.”[30]

In the prosecution for the crime of Bigamy under Article 349 of the Revised Penal Code, such as the one charged in Crim. Case No. Q-05-136250 against accused-appellant, the following elements must be established by the prosecution: (1) that the offender has been legally married; (2) that the first 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.[31]

Contrary to accused-appellant's first assignment of error, the lower court correctly ruled that accused-appellant contracted two (2) marriages.

Private complainant positively identified accused-appellant as her husband who subsequently contracted another marriage with Dayday.[32]

Accused-appellant denied having married and had argued in his Appeal Brief, as follows:

“As to the existence of the two (2) marriage contracts, the prosecution has submitted both.

But, the accused never entered into marriages with both the women whose name appear in the marriage contracts.

xxx

Accused has no marriages. He is not married. The first marriage contract is void due to lack of marriage license, signature and registry number. The second marriage contract is infirmed and void also due to lack of marriage ceremony, marriage license and signature of the accused.[33]

However, the existence of the first marriage was proven by the prosecution's presentation of the Marriage Contract between accused-appellant and private complainant Florenda. The second marriage contracted by accused-appellant was also proven by the prosecution's presentation of the Marriage Contract between accused-appellant and Dayday. The existence of the second marriage contracted by accused-appellant was further proven by the prosecution's presentation of a Certification from the Office of the Civil Registrar General of the National Statistics Office (NSO), stating such fact, as was pursuant to their records.[34]

All of these defeat accused-appellant's allegation that his first and second marriages were void because of the absence of a marriage license in each of these marriages. They also defeat accused-appellant's argument that his second marriage was void because of the absence of marriage ceremony. Such a result was also as found by the trial court, to wit:

"The denial by the accused of the existence of his marriages cannot be given weight in view of the clear and positive evidence of the prosecution. The accused failed to prove the nullity of his two (2) marriages. The existence of the two (2) marriages contracted by the accused has not been successfully refuted by him.

xxx

The alleged absence of the requisite marriage license is not a legal excuse in bigamy. The two marriages of the accused are presumed to be valid and existing. There is presumption in favor of legality and compliance with the law xxx.

Besides, it is a rule that a man and woman deporting themselves as husband and wife are disputably presumed to have entered into a lawful contract of marriage. It is a presumption which is satisfactory if uncontradicted and overcome by other evidence xxx.”[35](Emphasis supplied)

In fact in proving such allegations, accused-appellant merely presented his counter-affidavit. The rule is settled however, that a counter-affidavit of an accused is a self-serving declaration if “there was no way of ascertaining the truth of their contents.”[36]

In any event, the positive identification of accused-appellant, and the pieces of evidence submitted by the prosecution showing that he contracted two (2) marriages prevail over accused-appellant's defense of denial of private complainant's accusation, which defense on the other hand, is negative and self-serving evidence, undeserving of weight in law.[37]

Given that accused-appellant contracted a second marriage, then, opposite accused-appellant's argument in his second assignment of error, he could not argue that no crime of Bigamy was committed.

Accused-appellant had argued that:

“The prosecution only proved the existence of two (2) marriages because these are available in the files of the National Statistics Office (NSO).

The existence alone (per se) of a marriage contract does not prove marriage. It must have all the requisites of a valid marriage. In one case, (*Morigo v. People*, GR No. 145226, 6 Feb. 2004), the mere signing of a marriage contract by the contracting parties without the presence of solemnizing officer was declared null and void.

xxx

The second marriage contract was likewise void due to the lack/absence of marriage license, marriage ceremony and signature of the accused.

Another thing, the wife in the alleged second marriage has obtained a decree annulling such marriage for lack of marriage license under Article 4, Family Code.”[38] (Emphasis supplied)

However, accused-appellant's first marriage with private complainant was not yet legally dissolved when accused-appellant contracted his second marriage with Dayday. For this reason, accused-appellant's first marriage was presumed to be valid and subsisting. Such legal presumption of validity of accused-appellant's marriage with private complainant, contrary to accused-appellant's arguments in his third and fourth assignment of errors, could be the basis of accused-appellant's guilt for the crime of Bigamy, as is pursuant to the pronouncement of the Supreme Court in *Salvador S. Abunado and Zenaida Biñas Abunado vs. People of the Philippines*, G.R. No. 159218, March 30, 2004, to wit:

“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.” (Emphasis supplied)

Accused-appellant could not also properly claim that he could not be guilty based on his argument that his second marriage with Dayday had already been declared as an absolute nullity[39]. This is because at the time accused-appellant contracted his second marriage with Dayday, accused-appellant's first marriage with private complainant was still valid and subsisting. That such is the consequence is pursuant to the declaration made by the Supreme Court in *Victoria S. Jarillo vs. People of the Philippines*, G.R. No. 164435, September 29, 2009, to wit:

“xxx The moment petitioner 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, petitioner's marriage to Alocillo, which had not yet been declared null and void by a court of competent jurisdiction, was deemed valid and subsisting. Neither would a judicial declaration of the nullity of petitioner's marriage to Uy make any difference. As held in *Tenebro*, '[s]ince a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of this second marriage is not per se an argument for the avoidance of criminal liability for bigamy. xxx A plain reading of [Article 349 of the Revised Penal Code], therefore, would indicate that the provision penalizes the mere act of contracting a second or subsequent marriage during the subsistence of a valid marriage.” (Emphasis supplied)

No cogent or compelling reason was therefore shown to justify any deviation from the following findings of the trial court, which were supported by the facts and the law:

"It is a policy adopted by the Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family. Any doubt should be resolved in favor of the validity of the marriage xxx.

xxx

Lastly, Article 40 of the Family Code provides that 'the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.' It requires a prior judicial declaration of nullity of a previous marriage before a party may remarry. Even when a marriage is patently void, there would still be a need to have a judicial declaration of such fact before any party may marry again xxx. Parties to a marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the determination of competent courts. The Court has counseled that he who contracts a second marriage before judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy xxx." [40] (Emphasis supplied)

Given all these, then, contrary to accused-appellant's argument in his fifth assignment of error, the prosecution was able to prove the guilt of accused-appellant beyond reasonable doubt for the crime of “Bigamy”.

As to the penalty to be imposed on accused-appellant, the trial court, having acted pursuant to Article 349 of the Revised Penal Code and the Indeterminate Sentence Law, correctly meted out to accused-appellant the indeterminate penalty of two (2) years and five (5) months of Prison Correccional in its medium period, as minimum, to eight (8) years and five (5) days of Prison Mayor in its medium period, as maximum.

As to petitioner's “Compliance with Motion for Bail” [41] to allow accused-appellant to post bail while the appeal is pending, such has become moot and academic by the disposition here of the case.

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

WHEREFORE, the Appeal is DENIED. The Decision of the trial court is AFFIRMED.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 36 - 50

[2] Rollo, pp. 23 - 26

- [3] Records, p. 1
- [4] Records, p. 1
- [5] Records, p. 256; TSN November 6, 2006, p. 3; TSN, April 16, 2007, p. 4
- [6] Records, p. 178; TSN, November 6, 2006, pp. 3 - 4
- [7] Records, pp. 250 – 255; TSN, November 6, 2006, pp. 3 - 6
- [8] Records, p. 393
- [9] Records, p. 186; TSN, November 6, 2006, pp. 11 -12
- [10] Records, p. 264/ TSN, December 11, 2006, p. 27
- [11] Records, p. 190; TSN, November 6, 2006, pp. 12 - 15
- [12] Records, p. 426
- [13] Records, p. 516-518; TSN, April 16, 2007, pp. 3 - 5
- [14] Records, p. 544
- [15] Records, pp. 544, 567
- [16] Records, p. 660
- [17] Records, p. 569
- [18] Records, p. 545
- [19] Record 1, pp. 1 - 2
- [20] Records, p. 43
- [21] Records 1, pp. 167 - 171
- [22] Records 1, p 170 -171
- [23] Records 1, pp. 154 - 157
- [24] Records 1, pp. 154 - 157
- [25] Records 1, p. 157
- [26] Records, pp. 161 - 166
- [27] Records 1, pp. 172 - 173
- [28] Rollo, pp. 36-50
- [29] Rollo, p. 50
- [30] Rollo, pp. 34-35.
- [31] Atilano O. Nollora, Jr. vs. People of the Philippines, G.R. No. 191425, September 7, 2011.
- [32] Records, pp. 177-180
- [33] Rollo, pp. 45 - 48

[34] Records, pp. 96 - 98

[35] Rollo, pp. 54 - 55

[36] Office of the Ombudsman vs. Antonio T. Reyes, G.R. No. 170512, October 5, 2011.

[37] People of the Philippines vs. Rolly Flora y Candelaria, G.R. 181594, August 28, 2008.

[38] Rollo, pp. 42 - 44

[39] Rollo, p. 49

[40] Rollo, pp. 54 - 55

[41] Rollo, pp. 63 - 66

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