

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RICARDO NEPOMUCENO, JR. Y BERNARDINO, ACCUSED AND APPELLANT.

G.R. No. L-40624. June 27, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

The decision of the Court of First Instance of Bulacan, Branch V (Sta. Maria), convicting accused Ricardo Nepomuceno, Jr. y Bernardino of "Bigamy punishable under the provisions of Article 349, of the Revised Penal Code, and sentencing him to suffer an indeterminate penalty of Six (6) Months and One (1) day of Prison Correccional, as minimum, to Six (6) Years and Four (4) Months of Prison Mayor, as maximum, with costs", is now before Us for review because the Court of Appeals (Division of Five Justices) in its Resolution of April 14, 1975, in CA-G.R. No. 12641-CR, by a four to one vote ruled that only a question of law is involved in the appeal, and decision on the case is not dependent on factual findings to be made so as to bring the case within the competence of the appellate court. The dissenting opinion holds that there is no question of law involved as what is to be decided is the question of whether or not the information filed was defective for not including the second wife as an accused and, hence, the Court of Appeals could have decided it on the merits by affirming the decision of the lower court. The uncontested facts are:

"The Information dated December 8, 1969 reads as follows:

"The undersigned Provincial Fiscal accuses Ricardo Nepomuceno, Jr. of the crime of bigamy, penalized under the provisions of Art. 349 of the Revised Penal Code, committed as follows:

That on or about the 16th day of August, 1969, in the municipality of Norzagaray, province of Bulacan, Philippines, and within the jurisdiction this Honorable Court, the said accused Ricardo Nepomuceno, Jr., being then previously united in lawful marriage with one Dolores Desiderio, and without the said marriage having been legally dissolved, did then and there wilfully, unlawfully and feloniously contract a second marriage with one Norma Jimenez.

Contrary to law.

Malolos, Bulacan, December 8, 1969.

(Sgd.) FRANCISCO C. BURGOS

Asst. Provincial Fiscal

I hereby certify that a preliminary investigation in this case has been conducted by me in accordance with Sec. 14, Rule 112, of the Rules of Court, that there is reasonable ground to believe that the offense charged has been committed; and, that the accused is probably guilty thereof.

(Sgd.) FRANCISCO C. BURGOS

Asst. Provincial Fiscal'

(Orig. Rec., p. I)

"Upon arraignment on February 4, 1970, accused pleaded not guilty and trial proceeded accordingly. After the prosecution had presented one witness, the accused, on August 11, 1970, withdrew his plea of not guilty and changed it into one of guilty. The case however proceeded for the reception of evidence on the civil aspect.

"On December 9, 1970, a motion to quash was filed on the ground that the information is defective as it charged only the accused for bigamy without including the second wife and such failure, according to accused, conferred no jurisdiction on the lower court to try and decide the case. Said motion was denied on February 22, 1971. On April 28, 1971, private prosecutor orally withdrew the claim for damages, which the lower court granted. On May 25, 1971, the lower court rendered a decision the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused RICARDO NEPOMUCENO, JR. guilty beyond reasonable doubt of the crime of Bigamy punishable under the provisions of Article 349 of the Revised Penal Code and hereby sentences him to suffer an indeterminate sentence of Six (6) Months and One (1) Day of Prison Correccional as minimum, to Six (6) Years and Four (4) Months of Prison Mayor, as maximum, with costs." (Orig. Rec. 201-202)

"On appeal to the Court of Appeals, accused cited as a single error the lower court's failure to quash the information for lack of jurisdiction. While awaiting completion of the records the private prosecutor filed a motion to forward the case to the Supreme Court on the ground that the appeal involves a pure question of law. Two other motions of the same nature were subsequently filed. In its resolution of May 11, 1973, the Fifth Division of the Court of Appeals resolved to give due course to the appeal, to consider it submitted for decision, the same to be raffled immediately and to refer the motions to certify the case to the Supreme Court to the Division to which the case may be raffled."

The case was eventually assigned to the Court of Appeals Special Division of Five Justices which promulgated the resolution of April 14, 1975, forwarding the case to this Court for decision.

On the issue of whether or not the lower court erred in not quashing the information because it was defective for not including the second wife (not because of lack of jurisdiction), let us scrutinize the provision of Art. 349 of the Revised Penal Code, to wit:

"The penalty of prison 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 proceedings." (*Italics for emphasis*)

The crime of bigamy is committed when a person contracts a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been judicially declared as presumptively dead. The facts of this case clearly show that accused Nepomuceno married Dolores Desiderio on March 20, 1969, in Balagtas, Bulacan, and that about five months later, or on August 16, 1969, he again married Norma Jimenez in Norzagaray, Bulacan. Accused undeniably contracted two marriages in the short span of five months, which he categorically admitted when he pleaded guilty.

Appellant's contention that the crime of bigamy entails the joint liability of two persons who marry each other, while the previous marriage of one or the other is valid and subsisting is completely devoid of merit. Even a cursory scrutiny of Art. 349 of the Revised Penal Code will disclose that the crime of bigamy can be committed by one person who contracts a subsequent marriage while the former marriage is valid and subsisting. Bigamy is

not similar to the crimes of adultery and concubinage, wherein the law (Art. 344, first and third pars., Revised Penal Code, and Sec. 4, Rule 110, Rules of Court) specifically requires that the culprits, if both are alive, should be prosecuted or included in the information. In the crime of bigamy, both the first and second spouses may be the offended parties depending on the circumstances, as when the second spouse married the accused without being aware of his previous marriage. Only if the second spouse had knowledge of the previous undissolved marriage of the accused could she be included in the information as a co-accused. Bigamy is a public offense and a crime against status, while adultery and concubinage are private offenses and are crimes against chastity. In adultery and concubinage, pardon by the offended party will bar the prosecution of the case, which is not so in bigamy. It is, therefore, clear that bigamy is not similar to adultery or concubinage.

When the accused raised the question of defective information for non-inclusion of the second wife as an accused for the first time in a motion to quash, the lower court ruled:

"The information is clear that it is only the accused Ricardo Nepomuceno, Jr. who contracted a second marriage, he being previously united in lawful marriage with one Dolores Desiderio, and without the same having been legally dissolved, and there being no showing in the recitation of facts in the information to the effect that Norma Jimenez, the second wife, had knowledge of the first marriage, and despite said knowledge she contracted the second marriage with the accused; nor is there any showing that Norma Jimenez had had a previous marriage of her own, we see no reason for the inclusion of Norma Jimenez, the second wife, in the information." (Italics for emphasis)

Whether or not the second spouse, Norma Jimenez, should be included in the information is a question of fact that was determined by the fiscal who conducted the preliminary investigation in this case. That the fiscal did not include Norma Jimenez in the information simply shows absence of evidence that could make her liable for the crime. Her non-inclusion in the information as a co-accused of appellant Nepomuceno in the crime of bigamy is not a defect in the information filed against Nepomuceno alone since her inclusion or not in said information depended upon available evidence against her. The conclusion is, therefore, irresistible that the lower court committed no error when it refused to quash the information against the accused, Nepomuceno, on the mere flimsy ground that the second wife was not included therein.

WHEREFORE, the decision of the trial court convicting the appellant, Ricardo Nepomuceno, Jr. y Bernardino, and sentencing him accordingly, as stated on pages one (1) and three (3) hereof, is affirmed with costs against the accused-appellant. So ordered.

Makalintal, C.J., Castro, Fernando, Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., and Martin, JJ., concur.
Teehankee and Munoz Palma, JJ., on official leave.

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