

JESUS GANCHERO, PETITIONER, VS. HON. ANACLETO BELLOSILLO, IN HIS CAPACITY AS JUDGE OF CFI OF ILOILO, ETC., RESPONDENTS.

G.R. No. L-26340. June 30, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for a writ of certiorari to quash and set aside, for lack of jurisdiction, an order of respondent Judge of the Court of First Instance of Iloilo, in its Case No. 11189, denying a motion to quash and dismiss an information for bigamy, and directing the trial to proceed.

Petitioner Jesus Ganchero was charged in the said Court of First Instance, presided over by respondent Judge, Hon. Anacleto Bellosillo, with the crime of bigamy committed, according to the information,[1] in the following manner:

"That on or about the period covered from 6 June 1963 to 6 February 1965, inclusive, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused entered into a contract of marriage with Erlinda Soquatoso before the Muni-cipal Judge of the City of Iloilo and while the said marriage was still existing and valid said accused, with bad faith and fraudulent intent, did then and there willfully, unlawfully and criminally contracted (sic) a second marriage with Alita Aranjuez, his second wife, before the Parish Priest of Sto. Niño Church, Mabini, Davao, knowing fully well that his first marriage to his first wife, Erlinda Soquatoso, who is still living contracted on such a date at the City of Iloilo has not been legally dis-solved, but existing.

"CONTRARY TO LAW."

The accused moved to dismiss the charge," on the ground that this Court has no jurisdiction over the same, inasmuch as the venue of action is improperly laid" (Petition, Annex B). Counsel for the accused argued that on the face of the information the crime of bigamy was committed in the province of Davao, where the second marriage took place, and that the Court of First Instance of Iloilo has no jurisdiction to try the accused, because in criminal proceedings improper venue is lack of jurisdiction. The judge below denied the motion to dismiss, and also the subsequent plea for reconsideration filed by the accused. In view of the court's adamant stand, the accused resorted to this Court.

The answer avers that the crime charged is triable in Iloilo, because one of the essential ingredients of the crime, the prior marriage of the accused, had taken place in Iloilo. This the accused disputes.

The writ must be granted. The rule laid down by this Court is that where crimes "committed partly in one province and partly in another, that is to say, where some acts material and essential to the crime, and requisite to its consummation, occur in one province and some in another, are triable in either province".[2] This means that to make the offense triable in more than one province the acts perpetrated in any one of them must be impelled by the same criminal purpose or aim. In *Peo. vs. Zapata and Bondoc*, 88 Phil. 691, this Court stated:

"The notion or concept of a continuous crime has its origin in the juridical fiction favorable to the law

transgressors and in many a case against the interest of society (Cuello Calon, Derecho Penal, Vol. II, p. 521). For it to exist there should be plu-rality of acts performed separately during a period of time; unity of penal provision infringed upon or violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim (Ibid. page 520). - - -"

Bigamy being defined by Article 349 as the contracting "of 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 proceeding", it is self-evident that the place where the first marriage was celebrated is immaterial to the criminal act, intent and responsibility of the accused. What is essential is that the first marriage be not legally terminated, actually or by legal presumption, when the subsequent wedlock takes place; and it is upon the celebration of that subsequent marriage that bigamy is committed, not before. The con-tinued existence of the first marriage is without definite locus.

To hold with the trial court that the celebration of the first marriage was an essential ingredient of the bigamy is to assume that when the petitioner married his first wife he did so with intent already to marry his second consort; and there is nothing on record to warrant such assumption.

Since the second marriage of the accused occurred in Davao, outside the territorial jurisdiction of the respondent court, and in all criminal pro-secutions the action must be instituted and tried in the municipality or province where the offense or any of its essential ingredients was committed,[3] the Court of First Instance for the Province of Iloilo is devoid of jurisdiction to take cognizance of the crime charged.

WHEREFORE, the writ prayed for is granted, the order denying the quashing of the information is set aside, and the case ordered dismissed. The preliminary injunction heretofore issued is made permanent. No costs.

Concepcion, C.J., Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Dizon, J., did not take part.

[1] Petition, Annex A.

[2] U. S. vs. Santiago, 27 Phil. 411.

[3] Rule 110, section 14(a), Revised Rules of Court.

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