

ROLANDO LANDICHO, PETITIONER, VS. HON. LORENZO RELOVA, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF BATANGAS, BRANCH I, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-22579. February 23, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this petition for certiorari and prohibition with, pre-liminary injunction, the question before the Court is whether or not the existence of a civil suit for the annulment of marriage at the instance of the second wife against petitioner, with the latter in turn filing a third party complaint against the first spouse for the annulment of the first marriage, constitutes a prejudicial question in a pending suit for bigamy against him. Respondent Judge Relova answered in the negative. We sustain him.

The pertinent facts as set forth in the petition follow: On February 27, 1963, petitioner was charged before the Court of First Instance of Batangas, Branch I, presided over by respondent Judge, with the offense of bigamy. It was alleged in the information that petitioner "being then lawfully married to Elvira Makatangay, which marriage has not been legally dissolved, did then and there wilfully, unlawfully and feloniously contract a second marriage with Fe Lourdes Pasia." On March 15, 1963, an action was filed before the Court of First Instance of Batangas, likewise presided by respondent Judge, by plaintiff Fe Lourdes Pasia, seeking to declare her marriage to petitioner as null and void ab initio because of the alleged use of force, threats and intimidation allegedly employed by petitioner and because of its allegedly bigamous character. On June 15, 1963, petitioner as defendant in said case, filed a third-party complaint, against the third-party defendant Elvira Makatangay, the first spouse, praying that his marriage with the said third-party defendant be declared null and void, on the ground that by means of threats, force and intimidation, she compelled him to appear and contract marriage with her before the Justice of the Peace of Makati, Rizal.

Thereafter, on October 7, 1963, petitioner moved to suspend hearing of the criminal case pending the decision on the question of the validity of the two marriages involved in the pending civil suit. Respondent Judge on November 19, 1963 denied the motion for lack of merit. Then came a motion for reconsideration to set aside the above order, which was likewise denied on March 2, 1964. Hence this petition, filed on March 13, 1964.

In a resolution of this Court of March 17, 1964, respondent Judge was required to answer within ten (10) days, with a pre-liminary injunction being issued to restrain him from further proceeding with the prosecution of the bigamy case. In the meanwhile, before the answer was filed there was an amended petition for certiorari, the amendment consisting solely in the inclusion of the People of the Philippines as another respondent. This Court admitted such amended petition in a resolution of April 3, 1964.

Then came the answer to the amended petition on May 14 of that year where the statement of facts as above detailed was admitted, with the qualifications that the bigamy charge was filed upon the complaint of the first

spouse Elvira Macatangay. It alleged as one of its special and affirmative defenses that the mere fact that "there are actions to annul the marriages entered into by the accused in a bigamy case does not mean that 'prejudicial questions are automatically raised in said civil actions as to warrant the suspension of the criminal case for bigamy.'"[1] The answer stressed that even on the assumption that the first marriage was null and void on the ground alleged by petitioner, the fact would not be material to the outcome of the criminal case. It continued, referring to Viada, that "parties to the marriage should not be permitted to judge for themselves its nullity, for this must be submitted to the judgment of competence courts and only when the nullity of a 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, according to Viada, he who contracts a second marriage before the judicial declaration of nullity of the first marriage incurs the penalty provided for in this Article * * *." [2]

This defense is in accordance with the principle implicit in authoritative decisions of this Court. In *Merced v. Dlez*, [3] what was in issue was the validity of the second marriage, "which must be determined before hand in the civil action before the criminal action can proceed." According to the opinion of Justice Labrador: "We have a situation where the issue of the validity of the second marriage can be determined or must first be determined in the civil action before the criminal action for bigamy can be prosecuted. The question of the validity of the second marriage is, therefore, a prejudicial question, because determination of the validity of the second marriage is determinable in the civil action and must precede the criminal action for bigamy." It was the conclusion of this Court then that for petitioner Merced to be found guilty of bigamy, the second marriage which he contracted "must first be declared valid." Its validity having been questioned in the civil action, there must be a decision in such a case "before the prosecution for bigamy can proceed."

To the same effect is the doctrine announced in *Zapanta v. Mendoza*. [4] As explained, in the opinion of Justice Dizon: "We have heretofore defined a prejudicial question as that which arises in a case', the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal * * *. The prejudicial question - we further said - must be determinative of the case before the court, and jurisdiction to try the same must be lodged in another court * * *. These requisites are present in the case at bar. Should the question for annulment of the second marriage pending in the Court of First Instance of Pampanga prosper on the ground that, according to the evidence, petitioner's consent thereto was obtained by means of duress, force and intimidation, it is obvious that his act was involuntary and can not be the basis of his conviction for the crime of bigamy with which he was charged in the Court of First Instance of Bulacan. Thus the issue involved in the action for the annulment of the second marriage is determinative of petitioner's guilt or innocence of the crime of bigamy. * * *."

The situation in this case is markedly differently. At the time the petitioner was indicted for bigamy on February 27, 1963, the fact that two marriage ceremonies had been contracted appeared to be indisputable. Then on March 15, 1963, it was the second spouse, not petitioner who filed an action for nullity on the ground of force, threats and intimidation. It was sometime later, on June 15, 1963, to be precise, when petitioner, as defendant in the civil action, filed a third-party complaint against the first spouse alleging that his marriage with her should be declared null and void on the ground of force, threats and intimidation. As was correctly stressed in the answer of respondent Judge relying on Viada, parties to a marriage should not be permitted to judge for themselves its nullity, only competent courts having such authority. Prior to such declaration of nullity, the validity of the first marriage is beyond question. A party who contracts a second marriage then assumes the risk of being prosecuted for bigamy.

Such was the situation of petitioner. There is no occasion to indulge in the probability that the third-party complaint against the first wife brought almost five months after the prosecution for bigamy was started could

have been inspired by the thought that he could thus give color to a defense based on an alleged prejudicial question. The above judicial decisions as well as the opinion of Viada preclude a finding that respondent Judge abused, much less gravely abused, his discretion in failing to suspend the hearing as sought by petitioner.

WHEREFORE, the petition for certiorari is denied and the writ of preliminary injunction issued dissolve. With costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro and Angeles, JJ., concur.

Castro, J., reserves his vote.

[1] Special and Affirmative Defenses, Answer, par. 1.

[2] Idem, citing 3 Viada, Penal Code, p. 275.

[3] L-15315, August 26, 1960.

[4] L-14534, February 28, 1962.

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