

**JOSE C. SERMONIA, PETITIONER, VS. HON. COURT OF APPEALS,
ELEVENTH DIVISION, HON. DEOGRACIAS FELIZARDO, PRESIDING
JUDGE, REGIONAL TRIAL COURT OF PASIG, BR. 151, AND JOSEPH
SINSAY...**

G.R. No. 109454. June 14, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Bigamy is an illegal marriage committed by contracting a second or subsequent marriage before the first marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.[1] Bigamy carries with it the imposable penalty of prision mayor. Being punishable by an afflictive penalty, this crime prescribes in fifteen (15) years.[2] The fifteen-year prescriptive period commences to run from the day on which the crime is discovered by the offended party, the authorities, or their agents x x x x"[3]

That petitioner contracted a bigamous marriage seems impliedly admitted.[4] At least, it is not expressly denied. Thus the only issue for resolution is whether his prosecution for bigamy is already time-barred, which hinges on whether its discovery is deemed to have taken place from the time the offended party actually knew of the second marriage or from the time the document evidencing the subsequent marriage was registered with the Civil Registry consistent with the rule on constructive notice.

The antecedents: In an information filed on 26 May 1992, petitioner Jose C. Sermonia was charged with bigamy before the Regional Trial Court of Pasig, Br. 151, for contracting marriage with Ma. Lourdes Unson on 15 February 1975 while his prior marriage to Virginia C. Nievera remained valid and subsisting.[5]

Petitioner moved to quash the information on the ground that his criminal liability for bigamy has been extinguished by prescription.

In the order of 1 October 1992, respondent judge denied the motion to quash. On 27 October 1992, he likewise denied the motion to reconsider his order of denial.

Petitioner challenged the above orders before the Court of Appeals through a petition for certiorari and prohibition. In the assailed decision of 21 January 1993, his petition was dismissed for lack of merit.[6]

In this recourse, petitioner contends that his criminal liability for bigamy has been obliterated by prescription. He avers that since the second marriage contract was duly registered with the Office of the Civil Registrar in 1975,[7] such fact of registration makes it a matter of public record and thus constitutes notice to the whole world. The offended party therefore is considered to have had constructive notice of the subsequent marriage as of 1975; hence, prescription commenced to run on the day the marriage contract was registered. For this reason, the corresponding information for bigamy should have been filed on or before 1990 and not only in 1992.

Petitioner likewise takes issue with the "alleged concealment of the bigamous marriage" as declared by the appellate court, insisting that the second marriage was publicly held at Our Lady of Nativity Church in Marikina on 15 February 1975, and adding for good measure that from the moment of registration the marriage contract was open to inspection by any interested person.

On the other hand, the prosecution maintains that the prescriptive period does not begin from the commission of the crime but from the time of discovery by complainant which was in July 1991.

While we concede the point that the rule on constructive notice in civil cases may be applied in criminal actions if the factual and legal circumstances so warrant,[8] we agree with the view expounded by the Court of Appeals that it cannot apply in the crime of bigamy notwithstanding the possibility of its being more favorable to the accused. The appellate court succinctly explains -

Argued by the petitioner is that the principle of constructive notice should be applied in the case at bar, principally citing in support of his stand, the cases of *People v. Reyes* (175 SCRA 597); and *People v. Dinsay* (40 SCRA 50).

This Court is of the view that the principle of constructive notice should not be applied in regard to the crime of bigamy as judicial notice may be taken of the fact that a bigamous marriage is generally entered into by the offender in secrecy from the spouse of the previous subsisting marriage. Also, a bigamous marriage is generally entered into in a place where the offender is not known to be still a married person, in order to conceal his legal impediment to contract another marriage.

In the case of real property, the registration of any transaction involving any right or interest therein is made in the Register of Deeds of the place where the said property is located. Verification in the office of the Register of Deeds concerned of the transactions involving the said property can easily be made by any interested party. In the case of a bigamous marriage, verification by the offended person or the authorities of the same would indeed be quite difficult as such a marriage may be entered into in a place where the offender is not known to be still a married person.

Be it noted that in the criminal cases cited by the petitioner wherein constructive notice was applied, involved therein were land or property disputes and certainly, marriage is not property.

The non-application to the crime of bigamy of the principle of constructive notice is not contrary to the well entrenched policy that penal laws should be construed liberally in favor of the accused. To compute the prescriptive period for the offense of bigamy from registration thereof would amount to almost absolving the offenders thereof for liability therefor. While the celebration of the bigamous marriage may be said to be open and made of public record by its registration, the offender however is not truthful as he conceals from the officiating authority and those concerned the existence of his previous subsisting marriage. He does not reveal to them that he is still a married person. He likewise conceals from his legitimate spouse his bigamous marriage. And for these, he contracts the bigamous marriage in a place where he is not known to be still a married person. And such a place may be anywhere, under which circumstance, the discovery of the bigamous marriage is rendered quite difficult and would take time. It is therefore reasonable that the prescriptive period for the crime of bigamy should be counted only from the day on which the said crime was discovered by the offended party, the authorities or their agency (sic).

Considering such concealment of the bigamous marriage by the offender, if the prescriptive period for the offense of bigamy were to be counted from the date of registration thereof, the prosecution of the violators of the said offense would almost be impossible. The interpretation urged by the petitioner would encourage fearless violations of a social institution cherished and protected by law.[9]

To this we may also add that the rule on constructive notice will make de rigueur the routinary inspection or

verification of the marriages listed in the National Census Office and in various local civil registries all over the country to make certain that no second or even third marriage has been contracted without the knowledge of the legitimate spouse. This is too formidable a task to even contemplate.

More importantly, while Sec. 52 of P.D. 1529 (Property Registration Decree) provides for constructive notice to all persons of every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies from the time of such registering, filing or entering, there is no counterpart provision either in Act No. 3753 (Act to Establish a Civil Register) or in Arts. 407 to 413 of the Civil Code, which leads us to the conclusion that there is no legal basis for applying the constructive notice rule to the documents registered in the Civil Register.

Finally, petitioner would want us to believe that there was no concealment at all because his marriage contract with Ms. Unson was recorded in the Civil Registry which is open to all and sundry for inspection. We cannot go along with his argument because why did he indicate in the marriage contract that he was "single" thus obviously hiding his true status as a married man? Or for that matter, why did he not simply tell his first wife about the subsequent marriage in Marikina so that everything would be out in the open. The answer is obvious: He knew that no priest or minister would knowingly perform or authorize a bigamous marriage as this would subject him to punishment under the Marriage Law.^[10] Obviously, petitioner had no intention of revealing his duplicity to his first spouse and gambled instead on the probability that she or any third party would ever go to the local civil registrar to inquire. In the meantime, through the simple expedience of having the second marriage recorded in the local civil registry, he has set into motion the running of the fifteen-year prescriptive period against the unwary and the unsuspecting victim of his philandering.

Were we to put our imprimatur to the theory advanced by petitioner, in all likelihood we would be playing right into the hands of philanderers. For we would be equating the contract of marriage with ordinary deeds of conveyance and other similar documents without due regard for the stability of marriage as an inviolable social institution, the preservation of which is a primary concern of our society.

WHEREFORE, finding no reversible error in the questioned decision of the Court of Appeals, the same is AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.
Kapunan, J., no part.

[1] Art. 349, The Revised Penal Code.

[2] Art. 90, par. 3, id.

[3] Art. 91, id.

[4] Petitioner has not denied his coverture with Virginia C. Nievera and has likewise presented his marriage contract with Ma. Lourdes Unson as Annex "K" to the petition.

[5] Crim. Case No. 92582, RTC-Pasig.

[6] Decision penned by Mme. Justice Gloria C. Paras with Justices Luis L. Victor and Fermin A. Martin, Jr., concurring, CA--G.R. SP No. 29495; Rollo, pp. 29-32.

[7] Entry No. 1572, Bk. No. 36, pp. 96-97; Annex "K," Rollo, p. 75.

[8] *People v. Reyes*, G.R. Nos. 74226-27, 27 July 1989, 175 SCRA 597.

[9] See Note 6, pp. 30-31.

[10] Art. 352. Performance of illegal marriage ceremony-Priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony shall be punished in accordance with the provisions of the Marriage Law (The Revised Penal Code).

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