

JOSE G. GARCIA, PETITIONER, VS. COURT OF APPEALS, PEOPLE OF THE PHILIPPINES AND ADELA TEODORA P. SANTOS, RESPONDENTS.

G.R. No. 119063. January 27, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The issue here is whether the Court of Appeals committed reversible error in affirming the trial court's order granting the motion to quash the information for bigamy based on prescription.

On 28 August 1991, petitioner Jose G. Garcia filed with the Quezon City Prosecutor's Office an "Affidavit of Complaint" [1] charging his wife, private respondent Adela Teodora P. Santos alias "Delia Santos," with Bigamy, Violation of C.A. No. 142, as amended by R.A. No. 6085, and Falsification of Public Documents. However, in his letter of 10 October 1991 to Assistant City Prosecutor George F. Cabanilla, the petitioner informed the latter that he would limit his action to bigamy. [2]

After appropriate proceedings, Assistant Prosecutor Cabanilla filed on 8 January 1992 with the Regional Trial Court (RTC) of Quezon City an information, [3] dated 15 November 1991, charging the private respondent with Bigamy allegedly committed as follows:

That on or before the 2nd day of February, 1957, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being previously united in lawful marriage with REYNALDO QUIROCA, and without the said marriage having been dissolved, (or before the absent spouse has been declared presumptively dead by a judgment rendered in the proper proceedings), did then and there wilfully, unlawfully and feloniously contract a second marriage with JOSE G. GARCIA, which marriage has [sic] discovered in 1989, to the damage and prejudice of the said offended party in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW.

The information was docketed as Criminal Case No. Q-92-27272 and assigned to Branch 83 of the said court. On 2 March 1992, the private respondent filed a Motion to Quash alleging prescription of the offense as ground therefor. She contended that by the petitioner's admissions in his testimony given on 23 January 1991 in Civil Case No. 90-52730, entitled "Jose G. Garcia v. Delia S. Garcia," and in his complaint filed with the Civil Service Commission (CSC) on 16 October 1991, the petitioner discovered the commission of the offense as early as 1974. Pursuant then to Article 91 of the Revised Penal Code (RPC), [4] the period of prescription of the offense started to run therefrom. Thus, since bigamy was punishable by prision mayor, [5] an afflictive penalty [6] which prescribed in fifteen years pursuant to Article 92 of the RPC, then the offense charged prescribed in 1989, or fifteen years after its discovery by the petitioner.

The private respondent quoted [7] the petitioner's testimony in Civil Case No. 90-52730 as follows:

Q No, no, just answer. What did you learn from her (Eugenia) about the private respondent?

A That she has been married previously in case I don't know it. But she said she has been previously married,

in fact I saw her husband - Rey, a few days ago and they said, "Baka magkasama pa silang muli:"

xxx

ATTY. EVANGELISTA:

Q When did Eugenia R. Balingit told [sic] that private respondent was already married to another man?

A That was when I told her that we are separating now. I told her in tagalog, "na maghihiwalay na kami ni Delia ngayon." "Ang unang tanong niya sa akin, 'si Rey ba ang dahilan,' ang alam ko po, Rey ang dating boyfriend niya, kaya ang sabi ko, 'hindi po, Mario ang pangalan, ' napabagsak po siya sa upuan, sabi niya, 'hindi na nagbago.'"

Q When was that when you came to know from Eugenia Balingit, the judicial guardian, that private respondent was already married to another man when she married you?

A That was when the affair was happening and I found out.

Q What year?

A 1974. [8]

The portion of the complaint filed on 16 October 1991 before the CSC which the private respondent alluded to, reads as follows:

5. At the time the respondent married the herein complainant she never informed him that she was previously married to a certain "REYNALDO QUIROCA" on December 1, 1951 wherein she used the name of "ADELA SANTOS" which was part of her true name "ADELA TEODORA P. SANTOS" as per her genuine Baptismal Certificate issued by the Parish of San Guillermo, Bacolor, Pampanga, a copy of the said Baptismal Certificate is hereto attached as ANNEX "D";

6. x x x

7. These facts were discovered only by the herein complainant in the year 1974 where they separated from each other because of her illicit relations with several men continued use of her alias name "DELIA", without proper authority from the Courts; and committing a series of fraudulent acts; her previous marriage to a certain "Reynaldo Quiroca" is evidenced by a certification issued by the Local Civil Registrar of Manila, a copy of which is hereto attached as ANNEX "F"; [9]

In its 29 June 1992 order, [10] the trial court granted the motion to quash and dismissed the criminal case, ruling in this wise:

This court believes that since the penalty prescribed under Article 349 of the Revised Penal Code for the offense of bigamy is prison mayor, which is classified as an afflictive penalty under Article 25 of the same Code, then said offense should prescribe in fifteen (15) years as provided in Article 92 of the Code. The complainant having discovered the first marriage of the accused to one Reynaldo Quiroca in 1974 when he was informed of it by one Eugenia Balingit, the offense charged has already prescribed when the information was filed in this case on November 15, 1991. The argument presented by the prosecution that it was difficult for the complainant to obtain evidence of the alleged first marriage, hence, the prescriptive period should be counted from the time the evidence was secured will not hold water. Article 91 of the Revised Penal Code specifically provides, thus:

"The period of prescription shall commence to run from the day on which the crime is discovered x x x"

it did not state "on the day sufficient evidence was gathered," thus this Court cannot change the requirements of the law.

The petitioner moved for reconsideration of the above order on 26 August 1992, [11] to which he filed

"numerous" supplements thereto, focusing on the private respondent's many trips abroad which the petitioner claimed suspended the running of the prescriptive period. These trips were enumerated in the certification [12] issued by Associate Commissioner Ramon M. Morales of the Bureau of Immigration (BID), which reads as follows:

This is to certify that the name GARCIA/DELIA/S. appears in the Bureau's files of Arrivals and Departures as having the following travel records:

Departed for HKG on 06/03/77 aboard PR

Arrived from HKG on 07/02/77 aboard PA

Arrived from SYD on 07/09/77 aboard BR

Arrived from GUM on 06/14/80 aboard PA

Arrived from MEL on 07/17/81 aboard PR

Arrived from TYO on 05/20/83 aboard BA

Departed for HKG on 09/22/83 aboard PR

Arrived from SIN on 09/28/83 aboard PR

Departed for TYO on 04/30/84 aboard PA

Arrived from SFO on 07/03/84 aboard PA

Departed for TYO on 11/19/84 aboard PA

Departed for TYO on 08/05/85 aboard PA

Departed for TYO on 11/17/86 aboard UA

Arrived from LAX on 12/12/87 aboard UA

Departed for LAX on 11/30/87 aboard UA

Departed for CHI on 11/14/88 aboard UA

The trial court disallowed reconsideration of its 29 June 1992 order, finding "no urgent or justifiable reason to disturb or set [it] aside." As to the sojourns abroad of the private respondent as shown in the certification, the trial court held that the same "is not that kind of absence from the Philippines which will interrupt the period of prescription of the offense charged . . . " [13]

The petitioner then appealed to the Court of Appeals which docketed the appeal as CA-G.R. CR No. 14324. He contended therein that: (a) the trial court erred in quashing the information on the ground of prescription; and (b) the counsel for the accused was barred from filing the motion to quash the information against the accused. [14] As to the first, the petitioner argued that bigamy was a public offense, hence "the offended party is not the first or second (innocent) spouse but the State whose law/policy was transgressed." He tried to distinguish bigamy from private offenses such as adultery or concubinage "where the private complainant is necessarily the offended party," thus, the prescriptive period for the former should commence from the day the State, being the offended party, discovered the offense, which in this case was on 28 August 1991 when the petitioner filed his complaint before the Prosecutor's Office. The petitioner added that the "interchanging use" In Article 91 of the RPC of the terms "offended party," "authorities," and "their agents" supports his view that the State is the offended party in public offenses.

Additionally, the petitioner referred to the general rule stated in *People v. Alagao* [15] "that in resolving the motion to quash a criminal complaint or information[,] the facts alleged in the complaint or information should be taken as they are." The information in this case mentioned that the bigamy was discovered in 1989. He admitted, however, that this rule admits of exceptions, such as when the ground for the motion to quash is prescription of the offense, as provided in Section 4 of the old Rule 117 of the Rules of Criminal Procedure. Nonetheless, he advanced the view that this exception is no longer available because of the implied repeal of Section 4, as the amended Rule 117 no longer contains a similar provision under the rule on motions to quash; and that granting there was no repeal, the private respondent failed to introduce evidence to "support her factual averment in her motion to quash," which is required by Rule 117. He further asserted that the factual bases of the motion to quash, viz., the petitioner's testimony in Civil Case No. 90-52730 and his complaint filed with the CSC are not conclusive because the testimony is hearsay evidence, hence inadmissible, while the complaint is vague, particularly the following portion quoted by the private respondent:

7. These facts were discovered only by the herein complainant in the year 1974 when they separated from each other because of her illicit relations with several men continued use of her alias name "DELIA", without proper authority from the Courts; and committing a series of fraudulent acts; her previous marriage to a certain "Reynaldo Quiroca" is evidenced by a certification issued by the Local Civil Registrar of Manila, a copy of which is hereto attached as ANNEX "F";

The petitioner alleged that the phrase "These facts" in said paragraph 7 does not clearly refer to his discovery of the private respondent's first marriage. Moreover, he doubted whether the term "discovered" in the said paragraph was used in the sense contemplated by law. At best, the petitioner theorized, the discovery only referred to the "initial, unconfirmed and uninvestigated raw, hearsay information" which he received from Balingit.

Finally, the petitioner reiterated that the prescriptive period was interrupted several times by the private respondent's numerous trips abroad.

As regards his second contention, the petitioner argued that the counsel for the private respondent had already stated that he represented only Delia S. Garcia and not Adela Teodora P. Santos. Consequently, the private respondent's counsel could not ask for the quash of the information in favor of Adela Teodora P. Santos alias Delia Santos. The petitioner opined that the counsel for the private respondent should have sought a dismissal of the case in favor of Delia Garcia alone.

The Court of Appeals gave credence to the private respondent's evidence and concluded that the petitioner discovered the private respondent's first marriage in 1974. Since the information in this case was filed in court only on 8 January 1992, or eighteen years after the discovery of the offense, then the 15-year prescriptive period had certainly lapsed. [16] It further held that the quash of an information based on prescription of the offense could be invoked before or after arraignment and even on appeal, [17] for under Article 89(5) of the RPC, the criminal liability of a person is "totally extinguish[ed]" by the prescription of the crime, which is a mode of extinguishing criminal liability." Thus, prescription is not deemed waived even if not pleaded as a defense. [18]

Undaunted, the petitioner is now before us on a petition for review on certiorari to annul and set aside the decision of the Court of Appeals and to compel the respondent court to remand the case to the trial court for further proceedings. He submits the following assignment of errors:

I

BIGAMY IS A PUBLIC OFFENSE, CONSEQUENTLY, PRESCRIPTION SHOULD HAVE BEEN COUNTED FROM THE TIME THE STATE DISCOVERED ITS COMMISSION;

II

A MOTION TO QUASH CANNOT ALSO GO BEYOND WHAT IS STATED IN THE INFORMATION;

III

BY THEMSELVES, THE FACTUAL BASES OF THE MOTION TO QUASH ARE NOT ALSO CONCLUSIVE;

IV

ASSUMING THE PRESCRIPTIVE PERIOD STARTED IN 1974, SAID PERIOD HOWEVER WAS INTERRUPTED SEVERAL TIMES.

We notice that except for the first two pages of the petition, the deletion of a few paragraphs, the substitution of the term "petitioner" for "appellant," and the deletion of the contention on the counsel for the private respondent being barred from filing a motion to quash, the herein petition is a reproduction of the Appellant's Brief filed by the petitioner with the Court of Appeals. Verily then, the instant petition is a rehash of an old tale. However, the Court of Appeals failed to sufficiently address several issues raised by the petitioner, most probably prompting him to seek redress from this Court.

We resolved to give due course to the petition and required the parties to submit their respective memoranda. The Office of the Solicitor General was the last to submit a Memorandum for the public respondent. Both the private and public respondents ask for the dismissal of this petition and the affirmance of the challenged decision.

Petitioner's position is untenable. Denial then of this petition is all it merits.

We shall take up the assigned errors in seriatim.

I

It is true that bigamy is a public offense. But, it is entirely incorrect to state, as the petitioner does, that only the State is the offended party in such case, as well as in other public offenses, and, therefore, only the State's discovery of the crime could effectively commence the running of the period of prescription therefor. Article 91 of the RPC provides that "[t]he period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents" This rule makes no distinction between a public crime and a private crime. In both cases then, the discovery may be by the "offended party, the authorities, or their agents."

Article 91 does not define the term "offended party." We find its definition in Section 12, Rule 110 of the Rules of Court as "the person against whom or against whose property, the offense was committed." [19] The said Section reads as follows:

SEC. 12. Name of the offended party. -- A complaint or information must state the name and surname of the person against whom or against whose property the offense was committed, or any appellation or nickname by which such person has been or is known, and if there is no better way of identifying him, he must be described under a fictitious name.

More specifically, it is reasonable to assume that the offended party in the commission of a crime, public or private, is the party to whom the offender is civilly liable, in light of Article 100 of the RPC, which expressly provides that "[e]very person criminally liable for a felony is also civilly liable." [20] Invariably then, the private individual to whom the offender is civilly liable is the offended party.

This conclusion is strengthened by Section 1, Rule 111 of the Rules of Court which reads:

SEC. 1. Institution of criminal and civil actions. -- When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with a criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

x x x

It is settled that in bigamy, both the first and the second spouses may be the offended parties depending on the circumstances. [21]

The petitioner even admits that he is the offended party in Criminal Case No. Q-92-27272. The information therein, [22] which he copied in full in the petition in this case, describes him as the "offended party" who suffered "damage and prejudice . . . in such amount as may be awarded under the provisions of the Civil Code." [23]

The distinction he made between public crimes and private crimes relates not to the discovery of the crimes, but to their prosecution. Articles 344 and 360 of the RPC, in relation to Section 5, Rule 110 of the Rules of Court, are clear on this matter.

II

The petitioner's contention that a motion to quash cannot go beyond the information in Criminal Case No. Q-92-27272 which states that the crime was discovered in 1989, is palpably unmeritorious. Even *People v. Alagao*, [24] which he cites, mentions the exceptions to the rule as provided in paragraphs (f) and (h) of Section 2, and Sections 4 and 5 of the old Rule 117 viz., (a) extinction of criminal liability, and (b) double jeopardy. His additional claim that the exception of extinction can no longer be raised due to the implied repeal of the former Section 4, [25] Rule 117 of the Rules of Court occasioned by its non-reproduction after its revision, is equally without merit. No repeal, express or implied, of the said Section 4 ever took place. While there is no provision in the new Rule 117 that prescribes the contents of a motion to quash based on extinction of criminal liability, Section 2 thereof encapsulizes the former Sections 3,4, and 5 of the old Rule 117. The said Section 2 reads as follows:

SEC. 2. Form and contents. - The motion to quash shall be in writing signed by the accused or his counsel. It shall specify distinctly the factual and legal grounds therefor and the court shall consider no grounds other than those stated therein, except lack of jurisdiction over the offense charged. (3a, 4a, 5a). (underscoring supplied for emphasis)

It is clear from this Section that a motion to quash may be based on factual and legal grounds, and since extinction of criminal liability and double jeopardy are retained as among the grounds for a motion to quash in Section 3 of the new Rule 117, it necessarily follows that facts outside the information itself may be introduced to prove such grounds. As a matter of fact, inquiry into such facts may be allowed where the ground invoked is that the allegations in the information do not constitute the offense charged. Thus, in *People v. De la Rosa*, [26] this Court stated:

As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted. However, as held in the case of *People vs. Navarro*, 75 Phil. 516, additional facts not alleged in the information, but admitted or not denied by the

prosecution may be invoked in support of the motion to quash. Former Chief justice Moran supports this theory. [27]

In Criminal Case No. 92-27272, the trial court, without objection on the part of the prosecution, allowed the private respondent to offer evidence in support of her claim that the crime had prescribed. Consequently, the trial court, upon indubitable proof of prescription, correctly granted the motion to quash. It would have been, to quote De la Rosa, "pure technicality for the court to close its eyes to [the fact of prescription] and still give due course to the prosecution of the case" - a technicality which would have meant loss of valuable time of the court and the parties.

As noted by Dr. Fortunato Gupit, Jr., consultant of the Rules of Court Revision Committee, the aforementioned Section 2 of the new Rule 117 on "factual and legal grounds" of a motion to quash is based on the De la Rosa case. [28]

III

The petitioner likewise claims that the factual bases of the private respondent's motion to quash are inconclusive. The petitioner cannot be allowed to disown statements he made under oath and in open court when it serves his purpose. This is a contemptible practice which can only mislead the courts and thereby contribute to injustice. Besides, he never denied having given the pertinent testimony. He did, however, term it vague in that it was not clear whether the prior marriage which Eugenia Balingit disclosed to him was that entered into by the private respondent with Reynaldo Quiroca. It is immaterial to whom the private respondent was first married; what is relevant in this case is that the petitioner was informed of a prior marriage contracted by the private respondent.

Neither may the petitioner be heard to cast doubt on the meaning of his statements in his sworn complaint filed before the CSC. We find no hint of vagueness in them. In any event, he has not denied that he in fact discovered in 1974 that the private respondent had been previously married.

Finally, the petitioner draws our attention to the private respondent's several trips abroad as enumerated in the certification of the Bureau of Immigration, and cites the second paragraph of Article 91 of the RPC, viz.: "[t]he term of prescription shall not run when the offender is absent from the Philippine Archipelago." We agree with the Court of Appeals that these trips abroad did not constitute the "absence" contemplated in Article 91. These trips were brief, and in every case the private respondent returned to the Philippines. Besides, these were made long after the petitioner discovered the offense and even if the aggregate number of days of these trips are considered, still the information was filed well beyond the prescriptive period.

WHEREFORE, the instant petition is DENIED for lack of merit and the challenged decision of 13 February 1995 of the Court of Appeals in CA-G.R. CR No.14324 is AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original, Record (OR), CA-G.R. CR No. 14324, 39-40; Rollo, 40-41.

[2] Rollo, 54.

[3] OR. 11-12.

[4] The said Article provides as follows:

ART. 91. Computation of prescription of offense. - The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of the prescription shall not run when the offender is absent from the Philippine Archipelago.

[5] Article 349, Revised Penal Code.

[6] Article 25, Id.

[7] According to the petitioner, the motion to quash included a copy of the transcript of stenographic notes (TSN) taken on 23 January 1991 (Appellant's Brief, 10-11; OR, 33-34). However, neither the motion to quash nor the TSN is in the records. We therefore quote the petitioner's testimony as told by the private respondent in her Brief filed with the Court of Appeals.

[8] Appellant's Brief, 8; OR, 72, quoting TSN, 23 January 1991, 26-29.

[9] Id., 9, Id., 73.

[10] OR, 13-15. Per Judge Estrella T. Estrada.

[11] No copy of the petitioner's motion for reconsideration is included in the record.

[12] OR, 18.

[13] Id., 16.

[14] Appellant's Brief, 1; Id., 24.

[15] 16 SCRA 879 [1966].

[16] OR, 101-107. Per Luna, A., J., with Garcia C., and Jacinto, G., JJ. concurring.

[17] Citing *People v. Castro*, 95 Phil. 462 [1954]; *People v. Balagtas*, 105 Phil. 1362 [1959].

[18] Citing *People v. Serapio*, 23 Phil. 584 [1912]; *People v. Moran*, 44 Phil. 387 [1923]; Section 81, Rule 117, Rules of Court.

[19] See also concurring opinion of Feria, F. J., in *Guevarra v. Del Rosario*, 77 Phil 615, 621 [1946].

[20] This civil liability includes restitution, reparation of the damage caused, and indemnification for consequential damages (Article 104, Revised Penal Code).

[21] *People v. Nepomuceno*, 64 SCRA 518, 522 [1975]; *Lerum v. Cruz*, 87 Phil. 652, 656 [1950].

[22] OR, 11.

[23] Rollo, 18-19.

[24] *Supra* note 15, at 883.

[25] It provided as follows:

Sec.4. Contents of the motion to quash when based on extinction of criminal liability. - If the ground of the motion to quash is the extinction of criminal liability, the motion shall state whether by amnesty, pardon or marriage of the offender with the offended party in cases where such pardon or marriage extinguishes criminal liability, prescription of the offense or the penalty, and the facts constituting such extinction.

[26] 98 SCRA 190, 196-197 [1980].

[27] Citing MORAN, Comments on the Rules of Court, [1963 ed.] 139.

[28] GUPIT, Rules of Criminal Procedure, [1986 ed.] 281.

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