

VINCENT PAUL G. MERCADO A.K.A. VINCENT G. MERCADO, PETITIONER, VS. CONSUELO TAN, RESPONDENT.

G.R. No. 137110. August 01, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies even if the earlier union is characterized by statute as “void.”

The Case

Before us is a Petition for Review on Certiorari assailing the July 14, 1998 Decision of the Court of Appeals (CA)[1] in CA-GR CR No. 19830 and its January 4, 1999 Resolution denying reconsideration. The assailed Decision affirmed the ruling of the Regional Trial Court (RTC) of Bacolod City in Criminal Case No. 13848, which convicted herein petitioner of bigamy as follows:

“WHEREFORE, finding the guilt of accused Dr. Vincent Paul G. Mercado a.k.a. Dr. Vincent G. Mercado of the crime of Bigamy punishable under Article 349 of the Revised Penal Code to have been proven beyond reasonable doubt, [the court hereby renders] judgment imposing upon him a prison term of three (3) years, four (4) months and fifteen (15) days of prision correccional, as minimum of his indeterminate sentence, to eight (8) years and twenty-one (21) days of prision mayor, as maximum, plus accessory penalties provided by law.

Costs against accused.”[2]

The Facts

The facts are quoted by Court of Appeals (CA) from the trial court’s judgment, as follows:

“From the evidence adduced by the parties, there is no dispute that accused Dr. Vincent Mercado and complainant Ma. Consuelo Tan got married on June 27, 1991 before MTCC-Bacolod City Br. 7 Judge Gorgonio J. Ibañez [by reason of] which a Marriage Contract was duly executed and signed by the parties. As entered in said document, the status of accused was ‘single’. There is no dispute either that at the time of the celebration of the wedding with complainant, accused was actually a married man, having been in lawful wedlock with Ma. Thelma Oliva in a marriage ceremony solemnized on April 10, 1976 by Judge Leonardo B. Cañares, CFI-Br. XIV, Cebu City per Marriage Certificate issued in connection therewith, which matrimony was further blessed by Rev. Father Arthur Baur on October 10, 1976 in religious rites at the Sacred Heart Church, Cebu City. In the same manner, the civil marriage between accused and complainant was confirmed in a church ceremony on June 29, 1991 officiated by Msgr. Victorino A. Rivas, Judicial Vicar, Diocese of Bacolod City. Both marriages were consummated when out of the first consortium, Ma. Thelma Oliva bore accused two children, while a child, Vincent Paul, Jr. was sired by accused with complainant Ma. Consuelo Tan.

“On October 5, 1992, a letter-complaint for bigamy was filed by complainant through counsel with the City

Prosecutor of Bacolod City, which eventually resulted [in] the institution of the present case before this Court against said accused, Dr. Vincent G. Mercado, on March 1, 1993 in an Information dated January 22, 1993.

“On November 13, 1992, or more than a month after the bigamy case was lodged in the Prosecutor’s Office, accused filed an action for Declaration of Nullity of Marriage against Ma. Thelma V. Oliva in RTC-Br. 22, Cebu City, and in a Decision dated May 6, 1993 the marriage between Vincent G. Mercado and Ma. Thelma V. Oliva was declared null and void.

“Accused is charged [with] bigamy under Article 349 of the Revised Penal Code for having contracted a second marriage with herein complainant Ma. Consuelo Tan on June 27, 1991 when at that time he was previously united in lawful marriage with Ma. Thelma V. Oliva on April 10, 1976 at Cebu City, without said first marriage having been legally dissolved. As shown by the evidence and admitted by accused, all the essential elements of the crime are present, namely: (a) that the offender has been previously legally married; (2) that the first marriage has not been legally dissolved or in case the spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (3) that he contract[ed] a second or subsequent marriage; and (4) that the second or subsequent marriage ha[d] all the essential requisites for validity. x x x

“While acknowledging the existence of the two marriage[s], accused posited the defense that his previous marriage ha[d] been judicially declared null and void and that the private complainant had knowledge of the first marriage of accused.

“It is an admitted fact that when the second marriage was entered into with Ma. Consuelo Tan on June 27, 1991, accused’s prior marriage with Ma. Thelma V. Oliva was subsisting, no judicial action having yet been initiated or any judicial declaration obtained as to the nullity of such prior marriage with Ma. Thelma V. Oliva. Since no declaration of the nullity of his first marriage ha[d] yet been made at the time of his second marriage, it is clear that accused was a married man when he contracted such second marriage with complainant on June 27, 1991. He was still at the time validly married to his first wife.”[3]

Ruling of the Court of Appeals

Agreeing with the lower court, the Court of Appeals stated:

“Under Article 40 of the Family Code, ‘the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.’ But here, the final judgment declaring null and void accused’s previous marriage came not before the celebration of the second marriage, but after, when the case for bigamy against accused was already tried in court. And what constitutes the crime of bigamy is the act of any person who shall contract a second subsequent marriage ‘before’ the former marriage has been legally dissolved.”[4]

Hence, this Petition.[5]

The Issues

In his Memorandum, petitioner raises the following issues:

“A

Whether or not the element of previous legal marriage is present in order to convict petitioner.

“B

Whether or not a liberal interpretation in favor of petitioner of Article 349 of the Revised Penal Code punishing bigamy, in relation to Articles 36 and 40 of the Family Code, negates the guilt of petitioner.

“C

Whether or not petitioner is entitled to an acquittal on the basis of reasonable doubt.”[6]

The Court’s Ruling

The Petition is not meritorious.

Main Issue:

Effect of Nullity of Previous Marriage

Petitioner was convicted of bigamy under Article 349 of the Revised Penal Code, which provides:

“The penalty of prision 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 proper proceedings.”

The elements of this crime are as follows:

- “1. That the offender has been legally married;
2. That the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code;
3. That he contracts a second or subsequent marriage;
4. That the second or subsequent marriage has all the essential requisites for validity.”[7]

When the Information was filed on January 22, 1993, all the elements of bigamy were present. It is undisputed that petitioner married Thelma G. Oliva on April 10, 1976 in Cebu City. While that marriage was still subsisting, he contracted a second marriage, this time with Respondent Ma. Consuelo Tan who subsequently filed the Complaint for bigamy.

Petitioner contends, however, that he obtained a judicial declaration of nullity of his first marriage under Article 36 of the Family Code, thereby rendering it void ab initio. Unlike voidable marriages which are considered valid until set aside by a competent court, he argues that a void marriage is deemed never to have taken place at all.[8] Thus, he concludes that there is no first marriage to speak of. Petitioner also quotes the commentaries[9] of former Justice Luis Reyes that “it is now settled that if the first marriage is void from the beginning, it is a defense in a bigamy charge. But if the first marriage is voidable, it is not a defense.”

Respondent, on the other hand, admits that the first marriage was declared null and void under Article 36 of the Family Code, but she points out that that declaration came only after the Information had been filed. Hence, by then, the crime had already been consummated. She argues that a judicial declaration of nullity of a void previous marriage must be obtained before a person can marry for a subsequent time.

We agree with the respondent.

To be sure, jurisprudence regarding the need for a judicial declaration of nullity of the previous marriage has been characterized as “conflicting.”[10] In *People v. Mendoza*,[11] a bigamy case involving an accused who married three times, the Court ruled that there was no need for such declaration. In that case, the accused contracted a second marriage during the subsistence of the first. When the first wife died, he married for the third time. The second wife then charged him with bigamy. Acquitting him, the Court held that the second marriage was void ab initio because it had been contracted while the first marriage was still in effect. Since the second marriage was obviously void and illegal, the Court ruled that there was no need for a judicial declaration of its nullity. Hence, the accused did not commit bigamy when he married for the third time. This ruling was affirmed by the Court in

People v. Aragon,[12] which involved substantially the same facts.

But in subsequent cases, the Court impressed the need for a judicial declaration of nullity. In *Vda de Consuegra v. GSIS*,[13] Jose Consuegra married for the second time while the first marriage was still subsisting. Upon his death, the Court awarded one half of the proceeds of his retirement benefits to the first wife and the other half to the second wife and her children, notwithstanding the manifest nullity of the second marriage. It held: “And with respect to the right of the second wife, this Court observes that although the second marriage can be presumed to be void ab initio as it was celebrated while the first marriage was still subsisting, still there is need for judicial declaration of such nullity.”

In *Tolentino v. Paras*,[14] however, the Court again held that judicial declaration of nullity of a void marriage was not necessary. In that case, a man married twice. In his Death Certificate, his second wife was named as his surviving spouse. The first wife then filed a Petition to correct the said entry in the Death Certificate. The Court ruled in favor of the first wife, holding that “the second marriage that he contracted with private respondent during the lifetime of the first spouse is null and void from the beginning and of no force and effect. No judicial decree is necessary to establish the invalidity of a void marriage.”

In *Wiegel v. Sempio-Diy*,[15] the Court stressed the need for such declaration. In that case, Karl Heinz Wiegel filed an action for the declaration of nullity of his marriage to Lilia Olivia Wiegel on the ground that the latter had a prior existing marriage. After pretrial, Lilia asked that she be allowed to present evidence to prove, among others, that her first husband had previously been married to another woman. In holding that there was no need for such evidence, the Court ruled: “x x x There is likewise no need of introducing evidence about the existing prior marriage of her first husband at the time they married each other, for then such a marriage though void still needs, according to this Court, a judicial declaration of such fact and for all legal intents and purposes she would still be regarded as a married woman at the time she contracted her marriage with respondent Karl Heinz Wiegel; x x x.”

Subsequently, in *Yap v. CA*,[16] the Court reverted to the ruling in *People v. Mendoza*, holding that there was no need for such declaration of nullity.

In *Domingo v. CA*,[17] the issue raised was whether a judicial declaration of nullity was still necessary for the recovery and the separation of properties of erstwhile spouses. Ruling in the affirmative, the Court declared: “The Family Code has settled once and for all the conflicting jurisprudence on the matter. A declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense; in fact, the requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy.”[18]

Unlike *Mendoza* and *Aragon*, *Domingo* as well as the other cases herein cited was not a criminal prosecution for bigamy. Nonetheless, *Domingo* underscored the need for a judicial declaration of nullity of a void marriage on the basis of a new provision of the Family Code, which came into effect several years after the promulgation of *Mendoza* and *Aragon*.

In *Mendoza* and *Aragon*, the Court relied on Section 29 of Act No. 3613 (Marriage Law), which provided:

“Illegal marriages. — Any marriage subsequently contracted by any person during the lifetime of the first spouse shall be illegal and void from its performance, unless:

- (a) The first marriage was annulled or dissolved;
- (b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and

believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage as contracted being valid in either case until declared null and void by a competent court."

The Court held in those two cases that the said provision "plainly makes a subsequent marriage contracted by any person during the lifetime of his first spouse illegal and void from its performance, and no judicial decree is necessary to establish its invalidity, as distinguished from mere annulable marriages." [19]

The provision appeared in substantially the same form under Article 83 of the 1950 Civil Code and Article 41 of the Family Code. However, Article 40 of the Family Code, a new provision, expressly requires a judicial declaration of nullity of the previous marriage, as follows:

"ART. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such marriage void."

In view of this provision, Domingo stressed that a final judgment declaring such marriage void was necessary. Verily, the Family Code and Domingo affirm the earlier ruling in *Wiegel*. Thus, a Civil Law authority and member of the Civil Code Revision Committee has observed:

"[Article 40] is also in line with the recent decisions of the Supreme Court that the marriage of a person may be null and void but there is need of a judicial declaration of such fact before that person can marry again; otherwise, the second marriage will also be void (*Wiegel v. Sempio-Diy*, Aug. 19/86, 143 SCRA 499, *Vda. De Consuegra v. GSIS*, 37 SCRA 315). This provision changes the old rule that where a marriage is illegal and void from its performance, no judicial decree is necessary to establish its validity (*People v. Mendoza*, 95 Phil. 843; *People v. Aragon*, 100 Phil. 1033)." [20]

In this light, the statutory mooring of the ruling in *Mendoza* and *Aragon* – that there is no need for a judicial declaration of nullity of a void marriage -- has been cast aside by Article 40 of the Family Code. Such declaration is now necessary before one can contract a second marriage. Absent that declaration, we hold that one may be charged with and convicted of bigamy.

The present ruling is consistent with our pronouncement in *Terre v. Terre*, [21] which involved an administrative Complaint against a lawyer for marrying twice. In rejecting the lawyer's argument that he was free to enter into a second marriage because the first one was void ab initio, the Court ruled: "for purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void ab initio is essential." The Court further noted that the said rule was "cast into statutory form by Article 40 of the Family Code." Significantly, it observed that the second marriage, contracted without a judicial declaration that the first marriage was void, was "bigamous and criminal in character."

Moreover, Justice Reyes, an authority in Criminal Law whose earlier work was cited by petitioner, changed his view on the subject in view of Article 40 of the Family Code and wrote in 1993 that a person must first obtain a judicial declaration of the nullity of a void marriage before contracting a subsequent marriage: [22]

"It is now settled that the fact that the first marriage is void from the beginning is not a defense in a bigamy charge. As with a voidable marriage, there must be a judicial declaration of the nullity of a marriage before contracting the second marriage. Article 40 of the Family Code states that x x x. The Code Commission believes that the parties to a marriage should not be allowed to assume that their marriage is void, even if such is the fact, but must first secure a judicial declaration of nullity of their marriage before they should be allowed to marry again. x x x."

In the instant case, petitioner contracted a second marriage although there was yet no judicial declaration of nullity of his first marriage. In fact, he instituted the Petition to have the first marriage declared void only after complainant had filed a letter-complaint charging him with bigamy. By contracting a second marriage while the

first was still subsisting, he committed the acts punishable under Article 349 of the Revised Penal Code.

That he subsequently obtained a judicial declaration of the nullity of the first marriage was immaterial. To repeat, the crime had already been consummated by then. Moreover, his view effectively encourages delay in the prosecution of bigamy cases; an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.

Under the circumstances of the present case, he is guilty of the charge against him.

Damages

In her Memorandum, respondent prays that the Court set aside the ruling of the Court of Appeals insofar as it denied her claim of damages and attorney's fees.[23]

Her prayer has no merit. She did not appeal the ruling of the CA against her; hence, she cannot obtain affirmative relief from this Court.[24] In any event, we find no reason to reverse or set aside the pertinent ruling of the CA on this point, which we quote hereunder:

“We are convinced from the totality of the evidence presented in this case that Consuelo Tan is not the innocent victim that she claims to be; she was well aware of the existence of the previous marriage when she contracted matrimony with Dr. Mercado. The testimonies of the defense witnesses prove this, and we find no reason to doubt said testimonies.

x x x x x x x x

“Indeed, the claim of Consuelo Tan that she was not aware of his previous marriage does not inspire belief, especially as she had seen that Dr. Mercado had two (2) children with him. We are convinced that she took the plunge anyway, relying on the fact that the first wife would no longer return to Dr. Mercado, she being by then already living with another man.

“Consuelo Tan can therefore not claim damages in this case where she was fully conscious of the consequences of her act. She should have known that she would suffer humiliation in the event the truth [would] come out, as it did in this case, ironically because of her personal instigation. If there are indeed damages caused to her reputation, they are of her own willful making.”[25]

WHEREFORE, the Petition is DENIED and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Purisima, and Gonzaga-Reyes, JJ., concur.

Vitug, J., see concurring and dissenting opinion.

[1] Penned by J. Salome A. Montoya, Division chairman; with the concurrence of JJ Conchita Carpio Morales and Bernardo P. Abesamis, members.

[2] RTC Decision, pp. 16-17; rollo, pp. 136-137. This was written by Judge Edgar G. Garvilles.

[3] CA Decision, pp. 2-4; rollo, pp. 45-47.

[4] Ibid., p. 6; rollo, p. 13.

[5] The case was deemed submitted for resolution on May 26, 2000, upon receipt by this Court of the OSG

Memorandum signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Mariano M Martinez and Sol. Jesus P. Castelo. Respondent's Memorandum, which was signed by Atty. Julius C. Baldado, was received on November 11, 1999; while petitioner's Memorandum, signed by Attys. Bernard B. Lopez and Maritoni Z. Liwanag, had been filed earlier on September 30, 1999.

[6] Petitioner's Memorandum, p. 5; rollo, p. 215.

[7] Reyes, The Revised Penal Code, Book Two, 13th ed. (1993), p. 828.

[8] Citing Tolentino, Civil Code of the Philippines: Commentaries and Jurisprudence, Vol. I, p. 265.

[9] Reyes, The Revised Penal Code, Book Two, 12th ed. (1981), p. 907.9

[10] Domingo v. CA, 226 SCRA 572, September 17, 1993, per Romero, J.

[11] 95 Phil. 845, September 28, 1954.

[12] 100 Phil. 1033, February 28, 1957.

[13] 37 SCRA 315, 326, January 30, 1971, per Zaldivar, J. Emphasis supplied. See also Gomez v. Lipana, 33 SCRA 615, June 30, 1970.

[14] 122 SCRA 525,529, May 30, 1983; per Melencio-Herrera, J. Emphasis supplied.

[15] 143 SCRA 499, August 19, 1986, per Paras, J. Emphasis supplied.

[16] 145 SCRA 229, October 28, 1986.

[17] 226 SCRA 572, September 17, 1993, per Romero, J, citing Sempio-Diy, Handbook of the Family Code of the Philippines, 1988, p. 46.

[18] Supra, p. 579.

[19] People v. Mendoza, 95 Phil. 845, 847, September 28, 1954, per Paras, CJ. See also People v. Aragon, 100 Phil. 1033, 1034-1035, February 28, 1957, per Labrador, J.

[20] Sempio-Diy, Handbook on the Family Code of the Philippines, 1995 ed., p. 56.

[21] 211 SCRA 6, 11, July 3, 1992, per curiam.

[22] Reyes, Revised Penal Code, Book Two, 13th ed. (1993), p. 829. Emphasis supplied. Petitioner had cited the statement of Justice Reyes that "if the first marriage is void from the beginning, it is a defense in a bigamy charge." This statement, however, appeared in the 1981 edition of Reyes' book, before the enactment of the Family Code.

[23] Respondent's Memorandum, p. 16; rollo, p. 259.

[24] Lagandaon v. Court of Appeals, 290 SCRA 330, May 21, 1998; Dio v. Concepcion, 296 SCRA 579, September 25, 1998.

[25] CA Decision, pp. 7-9; rollo, pp. 50-52.

CONCURRING AND DISSENTING OPINION

VITUG, J.:

At the pith of the controversy is the defense of the absolute nullity of a previous marriage in an indictment for bigamy. The majority opinion, penned by my esteemed brother, Mr. Justice Artemio V. Panganiban, enunciates that it is only a judicially decreed prior void marriage which can constitute a defense against the criminal charge.

The civil law rule stated in Article 40 of the Family Code is a given but I have strong reservations on its application beyond what appears to be its expressed context. The subject of the instant petition is a criminal prosecution, not a civil case, and the ponencia affirms the conviction of petitioner Vincent Paul G. Mercado for bigamy.

Article 40 of the Family code reads:

“ART. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.”

The phrase “for purposes of remarriage” is not at all insignificant. Void marriages, like void contracts, are inexistent from the very beginning. It is only by way of exception that the Family code requires a judicial declaration of nullity of the previous marriage before a subsequent marriage is contracted; without such declaration, the validity and the full legal consequence of the subsequent marriage would itself be in similar jeopardy under Article 53, in relation to Article 52, of the Family Code. Parenthetically, I would daresay that the necessity of a judicial declaration of nullity of a void marriage for the purpose of remarriage should be held to refer merely to cases where it can be said that a marriage, at least ostensibly, had taken place. No such judicial declaration of nullity, in my view, should still be deemed essential when the “marriage,” for instance, is between persons of the same sex or when either or both parties had not at all given consent to the “marriage.” Indeed, it is likely that Article 40 of the Family Code has been meant and intended to refer only to marriages declared void under the provisions of Articles 35, 36, 37, 38 and 53 thereof.

In fine, the Family Code, I respectfully submit, did not have the effect of overturning the rule in criminal law and related jurisprudence. The Revised Penal Code expresses:

“Art. 349. Bigamy.---The penalty of prision 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 proper proceedings.

Surely, the foregoing provision contemplated an existing, not void, prior marriage. Covered by article 349 would thus be, for instance, a voidable marriage, it obviously being valid and subsisting until set aside by a competent court. As early as *People vs. Aragon*,^[1] this Court has underscored:

“xxx Our Revised Penal Code is of recent enactment and had the rule enunciated in Spain and in America requiring judicial declaration of nullity of ab initio void marriages been within the contemplation of the legislature, an express provision to that effect would or should have been inserted in the law. In its absence, we are bound by said rule of strict interpretation.”

Unlike a voidable marriage which legally exists until judicially annulled (and therefore not a defense in bigamy if the second marriage were contracted prior to the decree of annulment), the complete nullity, however, of a previously contracted marriage, being a total nullity and inexistent, should be capable of being independently raised by way of a defense in a criminal case for bigamy. I see no incongruence between this rule in criminal law and that of the Family Code, and each may be applied within the respective spheres of governance.

Accordingly, I vote to grant the petition.

[1] 100 Phil. 1033.

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