

IMELDA MARBELLA-BOBIS, PETITIONER, VS. ISAGANI D. BOBIS, RESPONDENT.*G.R. No. 138509. July 31, 2000*

Ponente: YNARES-SANTIAGO, J.

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On October 21, 1985, respondent contracted a first marriage with one Maria Dulce B. Javier. Without said marriage having been annulled, nullified or terminated, the same respondent contracted a second marriage with petitioner Imelda Marbella-Bobis on January 25, 1996 and allegedly a third marriage with a certain Julia Sally Hernandez. Based on petitioner's complaint-affidavit, an information for bigamy was filed against respondent on February 25, 1998, which was docketed as Criminal Case No. Q98-75611 of the Regional Trial Court, Branch 226, Quezon City. Sometime thereafter, respondent initiated a civil action for the judicial declaration of absolute nullity of his first marriage on the ground that it was celebrated without a marriage license. Respondent then filed a motion to suspend the proceedings in the criminal case for bigamy invoking the pending civil case for nullity of the first marriage as a prejudicial question to the criminal case. The trial judge granted the motion to suspend the criminal case in an Order dated December 29, 1998.[1] Petitioner filed a motion for reconsideration, but the same was denied.

Hence, this petition for review on certiorari. Petitioner argues that respondent should have first obtained a judicial declaration of nullity of his first marriage before entering into the second marriage, inasmuch as the alleged prejudicial question justifying suspension of the bigamy case is no longer a legal truism pursuant to Article 40 of the Family Code.[2]

The issue to be resolved in this petition is whether the subsequent filing of a civil action for declaration of nullity of a previous marriage constitutes a prejudicial question to a criminal case for bigamy.

A prejudicial question is one which arises in a case the resolution of which is a logical antecedent of the issue involved therein.[3] It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused.[4] It must appear not only that the civil case involves facts upon which the criminal action is based, but also that the resolution of the issues raised in the civil action would necessarily be determinative of the criminal case.[5] Consequently, the defense must involve an issue similar or intimately related to the same issue raised in the criminal action and its resolution determinative of whether or not the latter action may proceed.[6] Its two essential elements are:[7]

(a)

the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and

(b)

the resolution of such issue determines whether or not the criminal action may proceed.

A prejudicial question does not conclusively resolve the guilt or innocence of the accused but simply tests the sufficiency of the allegations in the information in order to sustain the further prosecution of the criminal case. A party who raises a prejudicial question is deemed to have hypothetically admitted that all the essential elements of a crime have been adequately alleged in the information, considering that the prosecution has not yet presented a single evidence on the indictment or may not yet have rested its case. A challenge of the allegations in the information on the ground of prejudicial question is in effect a question on the merits of the criminal charge through a non-criminal suit.

Article 40 of the Family Code, which was effective at the time of celebration of the second marriage, requires a prior judicial declaration of nullity of a previous marriage before a party may remarry. The clear implication of this is that it is not for the parties, particularly the accused, to determine the validity or invalidity of the marriage.[8] Whether or not the first marriage was void for lack of a license is a matter of defense because there is still no judicial declaration of its nullity at the time the second marriage was contracted. It should be remembered that bigamy can successfully be prosecuted provided all its elements concur - two of which are a previous marriage and a subsequent marriage which would have been valid had it not been for the existence at the material time of the first marriage.[9]

In the case at bar, respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is to disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite - usually the marriage license - and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provisions on bigamy. As succinctly held in *Landicho v. Relova*: [10]

(P)arties 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.

Respondent alleges that the first marriage in the case before us was void for lack of a marriage license. Petitioner, on the other hand, argues that her marriage to respondent was exempt from the requirement of a marriage license. More specifically, petitioner claims that prior to their marriage, they had already attained the age of majority and had been living together as husband and wife for at least five years.[11] The issue in this case is limited to the existence of a prejudicial question, and we are not called upon to resolve the validity of the first marriage. Be that as it may, suffice it to state that the Civil Code, under which the first marriage was celebrated, provides that "every intendment of law or fact leans toward the validity of marriage, the indissolubility of the marriage bonds." [12] Hence, parties should not be permitted to judge for themselves the nullity of their marriage, for the same must be submitted to the determination of competent courts. Only when the nullity of the 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.[13] No matter how obvious, manifest or patent the absence of an element is, the intervention of the courts must always be resorted to. That is why Article 40 of the Family Code requires a "final judgment," which only the courts can render. Thus, as ruled in *Landicho v. Relova*, [14] he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy, and in such a case the criminal case may not be suspended on the ground of the pendency of a civil case for declaration of nullity. In a recent case for concubinage, we held that the pendency of a civil case for declaration of nullity of marriage is not a prejudicial question.[15] This ruling applies here by analogy since both crimes presuppose the

subsistence of a marriage.

Ignorance of the existence of Article 40 of the Family Code cannot even be successfully invoked as an excuse.[16] The contracting of a marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment is an act penalized by the Revised Penal Code.[17] The legality of a marriage is a matter of law and every person is presumed to know the law. As respondent did not obtain the judicial declaration of nullity when he entered into the second marriage, why should he be allowed to belatedly obtain that judicial declaration in order to delay his criminal prosecution and subsequently defeat it by his own disobedience of the law? If he wants to raise the nullity of the previous marriage, he can do it as a matter of defense when he presents his evidence during the trial proper in the criminal case.

The burden of proof to show the dissolution of the first marriage before the second marriage was contracted rests upon the defense,[18] but that is a matter that can be raised in the trial of the bigamy case. In the meantime, it should be stressed that not every defense raised in the civil action may be used as a prejudicial question to obtain the suspension of the criminal action. The lower court, therefore, erred in suspending the criminal case for bigamy. Moreover, when respondent was indicted for bigamy, the fact that he entered into two marriage ceremonies appeared indubitable. It was only after he was sued by petitioner for bigamy that he thought of seeking a judicial declaration of nullity of his first marriage. The obvious intent, therefore, is that respondent merely resorted to the civil action as a potential prejudicial question for the purpose of frustrating or delaying his criminal prosecution. As has been discussed above, this cannot be done.

In the light of Article 40 of the Family Code, respondent, without first having obtained the judicial declaration of nullity of the first marriage, can not be said to have validly entered into the second marriage. Per current jurisprudence, a marriage though void still needs a judicial declaration of such fact before any party can marry again; otherwise the second marriage will also be void.[19] The reason is that, without a judicial declaration of its nullity, the first marriage is presumed to be subsisting. In the case at bar, respondent was for all legal intents and purposes regarded as a married man at the time he contracted his second marriage with petitioner.[20] Against this legal backdrop, any decision in the civil action for nullity would not erase the fact that respondent entered into a second marriage during the subsistence of a first marriage. Thus, a decision in the civil case is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question. As stated above, respondent cannot be permitted to use his own malfeasance to defeat the criminal action against him.[21]

WHEREFORE, the petition is GRANTED. The order dated December 29, 1998 of the Regional Trial Court, Branch 226 of Quezon City is REVERSED and SET ASIDE and the trial court is ordered to IMMEDIATELY proceed with Criminal Case No. Q98-75611.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Rollo, pp. 29-30.

[2] Petition, p. 6; Rollo, p. 23.

[3] *Fortich-Celdran v. Celdran*, 19 SCRA 502 (1967); *Zapanta v. Montessa*; 114 Phil. 428 (1962); *Merced v. Diez*, 109 Phil. 155 (1960); See also *People v. Aragon*, 94 Phil. 357 (1954) cited in *Dichaves v. Judge Apalit*, AM-MTJ-00-1274, June 8, 2000.

[4] *Yap v. Paras*, 205 SCRA 625 (1992); *Donato v. Luna*, 160 SCRA 441 (1988); *Quiambao v. Osorio*, 158

SCRA 674 (1988); Mendiola v. Macadaeg, 1 SCRA 593 (1961); Aleria v. Mendoza, 83 Phil. 427 (1949); Berbari v. Concepcion, 40 Phil. 837 (1920)

[5] Ras v. Rasul, 100 SCRA 125 (1980); Benitez v. Concepcion, Jr., 2 SCRA 178 (1961) citing De Leon v. Mabanag, 70 Phil. 202 (1940)

[6] Yap v. Paras, 205 SCRA 625 (1992)

[7] Rules of Court, Rule 111, Sec. 5. Elements of prejudicial question. -- The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed. (See also Prado v. People, 218 Phil. 571)

[8] Niñal v. Badayog, G.R. No. 133778, March 14, 2000.

[9] People v. Dumpo, 62 Phil. 246 (1935). The elements of bigamy are: (1) the offender has been legally married; (2) that the first marriage has not been legally dissolved, or in case his or her spouse is absent, the absent spouse has not been judicially declared presumptively dead; (3) that he contracts a subsequent marriage; (4) the subsequent marriage would have been valid had it not been for the existence of the first. The exception to prosecution for bigamy are those covered by Article 41 of the Family Code and by P.D. 1083 otherwise known as the Code of Muslim Personal Laws of the Philippines, which provides that penal laws relative to the crime of bigamy "shall not apply to a person married xxx under Muslim Law" where the requirements set therein are met. See also Sulu Islamic Association v. Malik, 226 SCRA 193 (1993); Merced v. Diez, 109 Phil. 155 (1960)

[10] 22 SCRA 731, 735 (1968)

[11] Civil Code, Article 76.

[12] Civil Code, Article 220.

[13] Landicho v. Relova, supra.

[14] Supra.

[15] Beltran v. People of the Philippines, G.R. No. 137567, June 20, 2000.

[16] Civil Code, Article 3.

[17] Revised Penal Code, Article 350.

[18] People v. Dungao, 56 Phil. 805 (1931)

[19] Apiag v. Judge Cantero, 268 SCRA 47, 61 (1997)

[20] Wiegel v. Hon. Sempio-Dy, 143 SCRA 499, 501 (1986)

[21] People v. Aragon, 94 Phil. 357, 360 (1954)

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