

VERONICO TENEBRO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT.*G.R. No. 150758. February 18, 2004*

Ponente: YNARES-SATIAGO, J.

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We are called on to decide the novel issue concerning the effect of the judicial declaration of the nullity of a second or subsequent marriage, on the ground of psychological incapacity, on an individual's criminal liability for bigamy. We hold that the subsequent judicial declaration of nullity of marriage on the ground of psychological incapacity does not retroact to the date of the celebration of the marriage insofar as the Philippines' penal laws are concerned. As such, an individual who contracts a second or subsequent marriage during the subsistence of a valid marriage is criminally liable for bigamy, notwithstanding the subsequent declaration that the second marriage is void ab initio on the ground of psychological incapacity.

Petitioner in this case, Veronico Tenebro, contracted marriage with private complainant Leticia Ancajas on April 10, 1990. The two were wed by Judge Alfredo B. Perez, Jr. of the City Trial Court of Lapu-lapu City. Tenebro and Ancajas lived together continuously and without interruption until the latter part of 1991, when Tenebro informed Ancajas that he had been previously married to a certain Hilda Villareyes on November 10, 1986. Tenebro showed Ancajas a photocopy of a marriage contract between him and Villareyes. Invoking this previous marriage, petitioner thereafter left the conjugal dwelling which he shared with Ancajas, stating that he was going to cohabit with Villareyes.[1]

On January 25, 1993, petitioner contracted yet another marriage, this one with a certain Nilda Villegas, before Judge German Lee, Jr. of the Regional Trial Court of Cebu City, Branch 15.[2] When Ancajas learned of this third marriage, she verified from Villareyes whether the latter was indeed married to petitioner. In a handwritten letter,[3] Villareyes confirmed that petitioner, Veronico Tenebro, was indeed her husband.

Ancajas thereafter filed a complaint for bigamy against petitioner.[4] The Information,[5] which was docketed as Criminal Case No. 013095-L, reads:

That on the 10th day of April 1990, in the City of Lapu-lapu, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, having been previously united in lawful marriage with Hilda Villareyes, and without the said marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second marriage with LETICIA ANCAJAS, which second or subsequent marriage of the accused has all the essential requisites for validity were it not for the subsisting first marriage.

CONTRARY TO LAW.

When arraigned, petitioner entered a plea of "not guilty".[6]

During the trial, petitioner admitted having cohabited with Villareyes from 1984-1988, with whom he sired two children. However, he denied that he and Villareyes were validly married to each other, claiming that no marriage

ceremony took place to solemnize their union.[7] He alleged that he signed a marriage contract merely to enable her to get the allotment from his office in connection with his work as a seaman.[8] He further testified that he requested his brother to verify from the Civil Register in Manila whether there was any marriage at all between him and Villareyes, but there was no record of said marriage.[9]

On November 10, 1997, the Regional Trial Court of Lapu-lapu City, Branch 54, rendered a decision finding the accused guilty beyond reasonable doubt of the crime of bigamy under Article 349 of the Revised Penal Code, and sentencing him to four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.[10] On appeal, the Court of Appeals affirmed the decision of the trial court. Petitioner's motion for reconsideration was denied for lack of merit.

Hence, the instant petition for review on the following assignment of errors:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED, AND THIS ERROR IS CORRECTIBLE IN THIS APPEAL — WHEN IT AFFIRMED THE DECISION OF THE HONORABLE COURT A QUO CONVICTING THE ACCUSED FOR (sic) THE CRIME OF BIGAMY, DESPITE THE NON-EXISTENCE OF THE FIRST MARRIAGE AND INSUFFICIENCY OF EVIDENCE.

II. THE COURT ERRED IN CONVICTING THE ACCUSED FOR (sic) THE CRIME OF BIGAMY DESPITE CLEAR PROOF THAT THE MARRIAGE BETWEEN THE ACCUSED AND PRIVATE COMPLAINANT HAD BEEN DECLARED NULL AND VOID AB INITIO AND WITHOUT LEGAL FORCE AND EFFECT.[11]

After a careful review of the evidence on record, we find no cogent reason to disturb the assailed judgment.

Under Article 349 of the Revised Penal Code, the elements of the crime of Bigamy are:

- (1) that 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 could not yet be presumed dead according to the Civil Code;
- (3) that he contracts a second or subsequent marriage; and
- (4) that the second or subsequent marriage has all the essential requisites for validity.[12]

Petitioner's assignment of errors presents a two-tiered defense, in which he (1) denies the existence of his first marriage to Villareyes, and (2) argues that the declaration of the nullity of the second marriage on the ground of psychological incapacity, which is an alleged indicator that his marriage to Ancajas lacks the essential requisites for validity, retroacts to the date on which the second marriage was celebrated.[13] Hence, petitioner argues that all four of the elements of the crime of bigamy are absent, and prays for his acquittal.[14]

Petitioner's defense must fail on both counts.

First, the prosecution presented sufficient evidence, both documentary and oral, to prove the existence of the first marriage between petitioner and Villareyes. Documentary evidence presented was in the form of: (1) a copy of a marriage contract between Tenebro and Villareyes, dated November 10, 1986, which, as seen on the document, was solemnized at the Manila City Hall before Rev. Julieta Torres, a Minister of the Gospel, and certified to by the Office of the Civil Registrar of Manila;[15] and (2) a handwritten letter from Villareyes to Ancajas dated July 12, 1994, informing Ancajas that Villareyes and Tenebro were legally married.[16]

To assail the veracity of the marriage contract, petitioner presented (1) a certification issued by the National Statistics Office dated October 7, 1995;[17] and (2) a certification issued by the City Civil Registry of Manila, dated February 3, 1997.[18] Both these documents attest that the respective issuing offices have no record of a marriage celebrated between Veronico B. Tenebro and Hilda B. Villareyes on November 10, 1986.

To our mind, the documents presented by the defense cannot adequately assail the marriage contract, which in itself would already have been sufficient to establish the existence of a marriage between Tenebro and Villareyes.

All three of these documents fall in the category of public documents, and the Rules of Court provisions relevant to public documents are applicable to all. Pertinent to the marriage contract, Section 7 of Rule 130 of the Rules of Court reads as follows:

Sec. 7. Evidence admissible when original document is a public record. — When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof (Emphasis ours).

This being the case, the certified copy of the marriage contract, issued by a public officer in custody thereof, was admissible as the best evidence of its contents. The marriage contract plainly indicates that a marriage was celebrated between petitioner and Villareyes on November 10, 1986, and it should be accorded the full faith and credence given to public documents.

Moreover, an examination of the wordings of the certification issued by the National Statistics Office on October 7, 1995 and that issued by the City Civil Registry of Manila on February 3, 1997 would plainly show that neither document attests as a positive fact that there was no marriage celebrated between Veronico B. Tenebro and Hilda B. Villareyes on November 10, 1986. Rather, the documents merely attest that the respective issuing offices have no record of such a marriage. Documentary evidence as to the absence of a record is quite different from documentary evidence as to the absence of a marriage ceremony, or documentary evidence as to the invalidity of the marriage between Tenebro and Villareyes.

The marriage contract presented by the prosecution serves as positive evidence as to the existence of the marriage between Tenebro and Villareyes, which should be given greater credence than documents testifying merely as to absence of any record of the marriage, especially considering that there is absolutely no requirement in the law that a marriage contract needs to be submitted to the civil registrar as a condition precedent for the validity of a marriage. The mere fact that no record of a marriage exists does not invalidate the marriage, provided all requisites for its validity are present.[19] There is no evidence presented by the defense that would indicate that the marriage between Tenebro and Villareyes lacked any requisite for validity, apart from the self-serving testimony of the accused himself. Balanced against this testimony are Villareyes' letter, Ancajas' testimony that petitioner informed her of the existence of the valid first marriage, and petitioner's own conduct, which would all tend to indicate that the first marriage had all the requisites for validity.

Finally, although the accused claims that he took steps to verify the non-existence of the first marriage to Villareyes by requesting his brother to validate such purported non-existence, it is significant to note that the certifications issued by the National Statistics Office and the City Civil Registry of Manila are dated October 7, 1995 and February 3, 1997, respectively. Both documents, therefore, are dated after the accused's marriage to his second wife, private respondent in this case.

As such, this Court rules that there was sufficient evidence presented by the prosecution to prove the first and second requisites for the crime of bigamy.

The second tier of petitioner's defense hinges on the effects of the subsequent judicial declaration[20] of the nullity of the second marriage on the ground of psychological incapacity.

Petitioner argues that this subsequent judicial declaration retroacts to the date of the celebration of the marriage to Ancajas. As such, he argues that, since his marriage to Ancajas was subsequently declared void ab initio, the crime of bigamy was not committed.[21]

This argument is not impressed with merit.

Petitioner makes much of the judicial declaration of the nullity of the second marriage on the ground of psychological incapacity, invoking Article 36 of the Family Code. What petitioner fails to realize is that a declaration of the nullity of the second marriage on the ground of psychological incapacity is of absolutely no moment insofar as the State's penal laws are concerned.

As a second or subsequent marriage contracted during the subsistence of petitioner's valid marriage to Villareyes, petitioner's marriage to Ancajas would be null and void *ab initio* completely regardless of petitioner's psychological capacity or incapacity.[22] Since a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of this second marriage is not *per se* an argument for the avoidance of criminal liability for bigamy. Pertinently, Article 349 of the Revised Penal Code criminalizes "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". A plain reading of the law, therefore, would indicate that the provision penalizes the mere act of contracting a second or a subsequent marriage during the subsistence of a valid marriage.

Thus, as soon as the second marriage to Ancajas was celebrated on April 10, 1990, during the subsistence of the valid first marriage, the crime of bigamy had already been consummated. To our mind, there is no cogent reason for distinguishing between a subsequent marriage that is null and void purely because it is a second or subsequent marriage, and a subsequent marriage that is null and void on the ground of psychological incapacity, at least insofar as criminal liability for bigamy is concerned. The State's penal laws protecting the institution of marriage are in recognition of the sacrosanct character of this special contract between spouses, and punish an individual's deliberate disregard of the permanent character of the special bond between spouses, which petitioner has undoubtedly done.

Moreover, the declaration of the nullity of the second marriage on the ground of psychological incapacity is not an indicator that petitioner's marriage to Ancajas lacks the essential requisites for validity. The requisites for the validity of a marriage are classified by the Family Code into essential (legal capacity of the contracting parties and their consent freely given in the presence of the solemnizing officer)[23] and formal (authority of the solemnizing officer, marriage license, and marriage ceremony wherein the parties personally declare their agreement to marry before the solemnizing officer in the presence of at least two witnesses).[24] Under Article 5 of the Family Code, any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37[25] and 38[26] may contract marriage.[27]

In this case, all the essential and formal requisites for the validity of marriage were satisfied by petitioner and Ancajas. Both were over eighteen years of age, and they voluntarily contracted the second marriage with the required license before Judge Alfredo B. Perez, Jr. of the City Trial Court of Lapu-lapu City, in the presence of at least two witnesses.

Although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the *vinculum* between the spouses is concerned, it is significant to note that said marriage is not without legal effects. Among these effects is that children conceived or born before the judgment of absolute nullity of the marriage shall be considered legitimate.[28] There is therefore a recognition written into the law itself that such a marriage, although void *ab initio*, may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple

marriages, while beguiling throngs of hapless women with the promise of futurity and commitment.

As such, we rule that the third and fourth requisites for the crime of bigamy are present in this case, and affirm the judgment of the Court of Appeals.

As a final point, we note that based on the evidence on record, petitioner contracted marriage a third time, while his marriages to Villareyes and Ancajas were both still subsisting. Although this is irrelevant in the determination of the accused's guilt for purposes of this particular case, the act of the accused displays a deliberate disregard for the sanctity of marriage, and the State does not look kindly on such activities. Marriage is a special contract, the key characteristic of which is its permanence. When an individual manifests a deliberate pattern of flouting the foundation of the State's basic social institution, the State's criminal laws on bigamy step in.

Under Article 349 of the Revised Penal Code, as amended, the penalty for the crime of bigamy is prision mayor, which has a duration of six (6) years and one (1) day to twelve (12) years. There being neither aggravating nor mitigating circumstance, the same shall be imposed in its medium period. Applying the Indeterminate Sentence Law, petitioner shall be entitled to a minimum term, to be taken from the penalty next lower in degree, i.e., prision correccional which has a duration of six (6) months and one (1) day to six (6) years. Hence, the Court of Appeals correctly affirmed the decision of the trial court which sentenced petitioner to suffer an indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

WHEREFORE, in view of all the foregoing, the instant petition for review is DENIED. The assailed decision of the Court of Appeals in CA-G.R. CR No. 21636, convicting petitioner Veronico Tenebro of the crime of Bigamy and sentencing him to suffer the indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

Puno, J., join the opinion of J. Vitug.

Vitug, J., see separate opinion.

Quisumbing, J., join the dissent in view of void nuptia.

Carpio, J., see dissenting opinion.

Austria-Martinez, J., join the dissent of J. Carpio.

Carpio-Morales, J., join the dissent of J. Carpio.

Tinga, J., join the dissent of J. Carpio.

Callejo, Sr., J., see separate dissent.

[1] TSN, 24 July 1995, pp. 4-11.

[2] Record, p. 78.

[3] Record, p. 84.

- [4] TSN, 24 July 1995, pp. 11-12; TSN, 13 September 1995, pp. 6-9.
- [5] Record, pp. 1-2.
- [6] Id., p. 66.
- [7] TSN, 11 December 1996, p. 6.
- [8] Id., pp. 6-7.
- [9] Id., pp. 7-8.
- [10] Penned by Judge Rumoldo F. Fernandez, Rollo, pp. 156-162.
- [11] Rollo, p. 7.
- [12] Reyes, L.B., THE REVISED PENAL CODE. Book Two, 14th ed., 1998, p. 907.
- [13] Rollo, pp. 7-16.
- [14] Id., pp. 16-18.
- [15] Record, p. 85.
- [16] Record, p. 84.
- [17] Record, p. 148.
- [18] Record, p. 149.
- [19] *Mariategui v. Court of Appeals*, G.R. No. 57062, 24 January 1992, 205 SCRA 337, 343, citing *People v. Borromeo*, 218 Phil. 122, 126.
- [20] Decision dated November 20, 1995, penned by Judge Epifanio C. Llano of the Regional Trial Court of Argao, Cebu, Branch 26, in Civil Case No. AV-885 (Annex "C", Rollo, p. 43).
- [21] Record, pp. 16-18.
- [22] Family Code, Art. 41.
- [23] Family Code, Art. 2.
- [24] Family Code, Art. 3; Vitug, *Civil Law and Jurisprudence*, 1993 Edition, pp. 119-120, citing the Family Code, Articles 2 and 3.
- [25] Art. 37. Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:
- (1) Between ascendants and descendants of any degree; and
 - (2) Between brothers and sisters, whether of the full — or half-blood.
- [26] Art. 38. The following marriages shall be void from the beginning for reasons of public policy:
- (1) Between collateral blood relatives; whether legitimate or illegitimate, up to the fourth civil degree;
 - (2) Between step-parents and stepchildren;
 - (3) Between parents-in-law and children-in-law;
 - (4) Between the adopting parent and the adopted child;
 - (5) Between the surviving spouse of the adopting parent and the adopted child;

- (6) Between the surviving spouse of the adopted child and the adopter;
- (7) Between an adopted child and a legitimate child of the adopter;
- (8) Between adopted children of the same adopter; and
- (9) Between parties where one, with the intention to marry the other, killed that other person's spouse or his or her own spouse.

[27] Valdez v. Regional Trial Court, Branch 102, Quezon City, G.R. No. 122749, 31 July 1996.

[28] Family Code, Art. 54.

SEPARATE OPINION

VITUG, J.:

Veronico Tenebro has been charged with bigamy for contracting, while still being married to Hilda Villareyes, a second marriage with private complainant Leticia Ancajas. Tenebro argues that since his second marriage with Ancajas has ultimately been declared void ab initio on the ground of the latter's psychological incapacity, he should be acquitted for the crime of bigamy.

The offense of bigamy is committed when one contracts "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".[1] Bigamy presupposes a valid prior marriage and a subsequent marriage, contracted during the subsistence of the prior union, which would have been binding were it not for its being bigamous.

Would the absolute nullity of either the first or the second marriage, prior to its judicial declaration as being void, constitute a valid defense in a criminal action for bigamy?

I believe that, except for a void marriage on account of the psychological incapacity of a party or both parties to the marriage under Article 36 of the Family Code (as so hereinafter explained), the answer must be in the affirmative. Void marriages are inexistent from the very beginning, and no judicial decree is required to establish their nullity.[2] As early as the case of *People vs. Aragon*[3] this Court has underscored the fact that the Revised Penal Code itself does not, unlike the rule then prevailing in Spain, require the judicial declaration of nullity of a prior void marriage before it can be raised by way of a defense in a criminal case for bigamy. Had the law contemplated otherwise, said the Court, "an express provision to that effect would or should have been inserted in the law, (but that in) its absence, (the courts) are bound by (the) rule of strict interpretation" of penal statutes. In contrast to a voidable marriage which legally exists until judicially annulled (and, therefore, not a defense in a bigamy charge if the second marriage were contracted prior to the decree of annulment)[4] the complete nullity, however, of a previously contracted marriage, being void ab initio and legally inexistent, can outrightly be defense in an indictment of bigamy.

It has been held that, by virtue of Article 40 of the Family Code, a person may be convicted of bigamy although the first marriage is ultimately adjudged void ab initio if, at the time the second marriage is contracted, there has as yet no judicial declaration of nullity of the prior marriage.[5] I maintain strong reservations to this ruling. Article 40 of the Family Code reads:

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

It is only "for purpose of remarriage" that the law has expressed that the absolute nullity of the previous marriage

may be invoked “on the basis solely of the final judgment declaring such previous marriage void.” It may not be amiss to state that under the regime of the Civil Code of 1950, the Supreme Court, in *Wiegel vs. Judge Sempio-Diy*,^[6] has held that a subsequent marriage of one of the spouses of a prior void marriage is itself (the subsequent marriage) void if it were contracted before a judicial declaration of nullity of the previous marriage. Although this pronouncement has been abandoned in a later decision of the court in *Yap vs. Court of Appeals*,^[7] the Family Code, however has seen it fit to adopt the *Wiegel* rule but only for purpose of remarriage which is just to say that the subsequent marriage shall itself be considered void. There is no clear indication to conclude that the Family Code has amended or intended to amend the Revised penal Code or to abandon the settled and prevailing jurisprudence on the matter.^[8]

A void marriage under Article 36 of the Family Code is a class by itself. The provision has been from Canon law primarily to reconcile the grounds for nullity of marriage under civil law with those of church laws.^[9] The “psychological incapacity to comply” with the essential marital obligations of the spouses is completely distinct from other grounds for nullity which are confined to the essential or formal requisites of a marriage, such as lack of legal capacity or disqualification of the contracting parties, want of consent, absence of a marriage license, or the like.

The effects of a marriage attended by psychological incapacity of a party or the parties thereto may be said to have the earmarks of a voidable, more than a void, marriage, remaining to be valid until it is judicially decreed to be a nullity. Thus, Article 54 of the Family Code considers children conceived or born of such a void marriage before its judicial declaration of nullity to be legitimate similar to the rule on a voidable marriage. It is expected, even as I believe it safe to assume, that the spouses’ rights and obligations, property regime and successional rights would continue unaffected, as if it were a voidable marriage, unless and until the marriage is judicially declared void for basically two reasons: First, psychological incapacity, a newly-added ground for the nullity of a marriage under the Family Code, breaches neither the essential nor the formal requisites of a valid marriages;^[10] and second, unlike the other grounds for nullity of marriage (i.e., relationship, minority of the parties, lack of license, mistake in the identity of the parties) which are capable of relatively easy demonstration, psychological incapacity, however, being a mental state, may not so readily be as evident.^[11] It would have been logical for the Family Code to consider such a marriage explicitly voidable rather than void if it were not for apparent attempt to make it closely coincide with the Canon Law rules and nomenclature.

Indeed, a void marriage due to psychological incapacity appears to merely differ from a voidable marriage in that, unlike the latter, it is not convalidated by either cohabitation or prescription. It might be recalled that prior to republic Act No. 8533, further amending the Family Code, an action or defense of absolute nullity of marriage falling under Article 36, celebrated before the effectivity of the Code, could prescribe in ten years following the effectivity of the Family Code. The initial provision of the ten-year period of prescription seems to betray a real consciousness by the framers that marriages falling under Article 36 are truly meant to be inexistent.

Considerations, both logical and practical, would point to the fact that a “void” marriage due to psychological incapacity remains, for all intents and purposes, to be binding and efficacious until judicially declared otherwise. Without such marriage having first been declared a nullity (or otherwise dissolved), a subsequent marriage could constitute bigamy. Thus, a civil case questioning the validity of the first marriage would not be a prejudicial issue much in the same way that a civil case assailing a prior “voidable” marriage (being valid until annulled) would not be a prejudicial question to the prosecution of a criminal offense for bigamy.

In cases where the second marriage is void on grounds other than the existence of the first marriage, this Court has declared in a line of cases that no crime of bigamy is committed.^[12] The Court has explained that for a person to be held guilty of bigamy, it must, even as it needs only, be shown that the subsequent marriage has all

the essential elements of a valid marriage, were it not for the subsisting first union. Hence, where it is established that the second marriage has been contracted without the necessary license and thus void,[13] or that the accused is merely forced to enter into the second (voidable) marriage,[1] no criminal liability for the crime of bigamy can attach. In both and like instances, however, the lapses refers to the elements required for contracting a valid marriage. If, then, all the requisites for the perfection of the contract marriage, freely and voluntarily entered into, are shown to be extant, the criminal liability for bigamy can unassailably arise.

Since psychological incapacity, upon the other hand, does not relate to an infirmity in the elements, either essential or formal, in contacting a valid marriage, the declaration of nullity subsequent to the bigamous marriage due to that ground, without more, would be inconsequential in a criminal charge for bigamy. The judicial declaration of nullity of a bigamous marriage on the ground of psychological incapacity merely nullifies the effects of the marriage but it does not negate the fact of perfection of the bigamous marriage. Its subsequent declaration of nullity dissolves the relationship of the spouses but, being alien to the requisite conditions for the perfection of the marriage, the judgment of the court is no defense on the part of the offender who had entered into it.

Accordingly, I vote to dismiss the petition.

[1] Article 349, Revised Penal Code.

[2] Odayat vs. Amante, 77 SCRA 338; see also People vs Aragon, 100 Phil. 1033.

[3] 100 Phil 1033.

[4] See People vs. Mendoza, 50 O.G. 4767.

[5] Mercado vs. Tan, 337 SCRA 122; Te vs. Court of Appeals, 346 SCRA 327.

[6] 143 SCRA 499.

[7] 145 SCRA 229.

[8] I might add, parenthetically, that the necessity of a judicial declaration of nullity of a void marriage even for purposes of remarriage should refer merely to cases when it can be said that the marriage, at least ostensibly, has taken place. For instance, no such judicial declaration of nullity would yet be required when either or both parties have not at all given consent thereto that verily results in a “no” marriage situation or when the prior “marriage” is between persons of the same sex.

[9] Deliberations of the family Code Revision Committee, 9 August 1996.

[10] Art. 2. No marriage shall be valid, unless these essential requisites are present:

- (1) Legal capacity of the contracting parties who must be a male and a female; and
- (2) Consent freely given in the presence of the solemnizing officer. (53a)

Art. 3. The formal requisites of marriage are:

- (1) Authority of the solemnizing officer;
- (2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and
- (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take other as husband and wife in the presence of not less than two witnesses of legal age. (53a, 55a)

Art. 4. The absence of any of the essential or formal requisites shall render the marriage void ab initio, except as stated in Article 35(2).

A defect in any of the essential requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable. (n)

[11] One might observe that insanity, which could be worse than psychological incapacity merely renders a marriage voidable, not void.

[12] *De la cruz vs. Hon. Ejercito*, G.R. No. L-40895, 6 November 1975, 68 SCRA 1; *Merced vs. Hon. Diez, et. Al.*, 109 Phil 155; *Zapanta vs. hon. Montessa, et. al.*, 144 Phil. 1227; *People vs. Mora Dumpo*, 62 Phil 246; *People vs. Lara*, 51 O. G. 4079.

[13] *People vs. Lara*, *supra*.

[14] *De la Cruz vs. Hon. Ejercito*, *supra*; *Merced vs. Hon. Diez*, *supra*.

DISSENTING OPINION

CARPIO, J.:

I dissent from the decision of the majority, as expressed in the ponencia of Justice Consuelo Ynares-Santiago. The majority opinion reverses a well-settled doctrine, established in a long line of decisions, applying Article 349 of the Revised Penal Code. The reversal finds no support in the plain and ordinary meaning of Article 349. The reversal also violates the constitutional guarantees of the accused and the separation of powers.

The majority opinion makes the following ruling:

We hold that the subsequent judicial declaration of nullity of marriage on the ground of psychological incapacity does not retroact to the date of celebration of the marriage insofar as the Philippines' penal laws are concerned. As such, an individual who contracts a second or subsequent marriage during the subsistence of a valid marriage is criminally liable for bigamy, notwithstanding the subsequent declaration that the second marriage is void ab initio on the ground of psychological incapacity.

The issue may be stated thus: if the second marriage is void ab initio on grounds other than the existence of the first marriage, such as psychological incapacity, is there a crime of bigamy?

In the present case, the prosecution filed the information for bigamy against the accused Veronico Tenebro before the judicial declaration of nullity of his second marriage. However, before his conviction for bigamy by the trial court, another court judicially declared his second marriage void ab initio because of psychological incapacity.

The majority opinion is premised on two basic assertions. First, the mere act of entering into a second marriage contract while the first marriage subsists consummates the crime of bigamy, even if the second marriage is void ab initio on grounds other than the mere existence of the first marriage. Second, a marriage declared by law void ab initio, and judicially confirmed void from the beginning, is deemed valid for the purpose of a criminal prosecution for bigamy. I shall examine the correctness of these assertions.

The majority opinion holds that the validity of the second marriage is immaterial and the mere act of entering into a second marriage, even if void ab initio on grounds other than the existence of the first marriage, consummates the crime of bigamy. Thus, the majority opinion states:

As a second or subsequent marriage contracted during the subsistence of petitioner's valid marriage to

Villareyes, petitioner's marriage to Ancajas would be null and void ab initio completely regardless of petitioner's psychological capacity or incapacity. Since a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of this second marriage is not per se an argument for the avoidance of criminal liability for bigamy. Pertinently, Article 349 of the Revised Penal Code criminalizes "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". A plain reading of the law, therefore, would indicate that the provision penalizes the mere act of contracting a second or a subsequent marriage during the subsistence of a valid marriage.

Thus, as soon as the second marriage to Ancajas was celebrated on April 10, 1990, during the subsistence of the valid first marriage, the crime of bigamy had already been consummated. To our mind, there is no cogent reason for distinguishing between a subsequent marriage that is null and void purely because it is a second or subsequent marriage, and a subsequent marriage that is null and void on the ground of psychological incapacity, at least insofar as criminal liability for bigamy is concerned, x x x. (Bold underscoring supplied; italics in the original)

The majority opinion concedes that the second marriage in the present case is void ab initio, even without need of judicial declaration. The majority expressly admits that the second marriage does not legally exist, and thus in legal contemplation never took place at all. Nevertheless, the majority holds that the second marriage is a marriage that exists in law sufficient to convict the accused of the crime of bigamy.

The majority opinion holds that a judicial declaration of nullity of Tenebro's second marriage is immaterial in a prosecution for the crime of bigamy. Such judicial declaration that the second marriage is void from the beginning is absolutely of no moment.

Prior to appellant Tenebro's conviction by the trial court of the crime of bigamy, his second marriage was in fact judicially declared void ab initio on the ground of psychological incapacity. Tenebro could count in his favor not only an express provision of law declaring his second marriage void ab initio, he also had a judicial confirmation of such nullity even prior to his conviction of bigamy by the trial court. The majority opinion, however, simply brushes aside the law and the judicial confirmation. The majority opinion holds that the fact that the second marriage is void ab initio on the ground of psychological incapacity, and judicially declared as void from the very beginning, is immaterial in a bigamy charge.

For more than 75 years now, this Court has consistently ruled that if the second marriage is void on grounds other than the existence of the first marriage, there is no crime of bigamy. The Court first enunciated this doctrine in the 1935 case of *People v. Mora Dumpo*,^[1] where the Court held:

Moro Hassan and Mora Dumpo have been legally married according to the rites and practices of the Mohammedan religion. Without this marriage being dissolved, it is alleged that Dumpo contracted another marriage with Moro Sabdapal after which the two lived together as husband and wife. Dumpo was prosecuted for and convicted of the crime of bigamy in the Court of First Instance of Zamboanga and sentenced to an indeterminate penalty with a maximum of eight years and one day of prision mayor and a minimum of two years, four months and twenty-one days of prision correccional, with costs. From this judgment the accused interposed an appeal. The records of the case disclose that it has been established by the defense, without the prosecution having presented any objection nor evidence to the contrary, that the alleged second marriage of the accused is null and void according to Mohammedan rites on the ground that her father had not given his consent thereto.

x x x

It is an essential element of the crime of bigamy that the alleged second marriage, having all the essential requisites, would be valid were it not for the subsistence of the first marriage. It appearing that the marriage

alleged to have been contracted by the accused with Sabdapal, her former marriage with Hassan being undissolved, cannot be considered as such, there is no justification to hold her guilty of the crime charged in the information. (Emphasis supplied)

In *People v. Mendoza*,^[2] decided in 1954, the Court acquitted the accused of bigamy on the ground that the first marriage was void having been contracted during the subsistence of a still earlier marriage. The Court held:

The following facts are undisputed: On August 5, 1936, the appellant and Jovita de Asis were married in Marikina, Rizal. On May 14, 1941, during the subsistence of the first marriage, the appellant was married to Olga Lema in the City of Manila. On February 2, 1943, Jovita de Asis died. On August 19, 1949, the appellant contracted another marriage with Carmencita Panlilio in Calamba, Laguna. This last marriage gave rise to his prosecution for and conviction of the crime of bigamy.

The appellant contends that his marriage with Olga Lema on May 14, 1941 is null and void and, therefore, non-existent, having been contracted while his first marriage with Jovita de Asis August 5, 1936 was still in effect, and that his third marriage to Carmencita Panlilio on August 19, 1949 cannot be the basis of a charge for bigamy because it took place after the death of Jovita de Asis. The Solicitor General, however, argues that, even assuming that appellant's second marriage to Olga Lema is void, he is not exempt from criminal liability, in the absence of a previous judicial annulment of said bigamous marriage; and the case of *People vs. Cotas*, 40 Off. Gaz., 3134, is cited.

x x x

In the case at bar, it is admitted that appellant's second marriage with Olga Lema was contracted during the existence of his first marriage with Jovita de Asis. Section 29 of the marriage law (act 3613), in force at the time the appellant contracted his second marriage in 1941, provides as follows:

Illegal marriages. — Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such 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 so contracted being valid in either case until declared null and void by a competent court.

This statutory 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. There is here no pretense that appellant's second marriage with Olga Lema was contracted in the belief that the first spouse, Jovita de Asis, has been absent for seven consecutive years or generally considered as dead, so as to render said marriage valid until declared null and void by a competent court.

Wherefore, the appealed judgment is reversed and the defendant-appellant acquitted, with costs de officio so ordered.

In *People v. Lara*,³ decided in 1955, the Court acquitted the accused of bigamy on the ground that his second marriage was void for lack of a marriage license. Declared the Court in *Lara*:

It is not disputed that the [accused] and Anacoreta Dalanida were married on July 1, 1947 x x x. Neither is it denied that on August 18, 1951, while the marriage just referred to was subsisting, appellant entered into a second marriage, this time with Josefa A. Rosales x x x.

In connection with the contract [for the second marriage], undisputed documentary evidence show that x x x it was only on August 19, 1951, that the marriage license x x x was issued x x x.

We are x x x of the opinion that the evidence in this case virtually beyond reasonable doubt that the marriage license x x x was issued x x x on the date appearing thereon x x x namely, August 19, 1951.

x x x

Article 53 of the Civil Code of the Philippines, x x x which “no marriage shall be solemnized,” one of them being a marriage license duly issued at the time of the celebration of the marriage x x x. Related to this point, Article 80(3) of the new Civil Code makes it clear that a marriage performed without the corresponding marriage license is void, this being nothing more than the legitimate consequence flowing from the fact that the license is the essence of the marriage contract.

Under the provisions of the Revised Penal Code there can be possible conviction for bigamy without proof that the accused had voluntarily contracted a second marriage during the subsistence of his first marriage with another person. Such was the interpretation given by the Court in *People v. Mora Dumpo* that: “It is an essential element of the crime of bigamy that the alleged second marriage, having all the essential requisites, would be valid were it not for the subsistence of the first marriage.”

x x x

As to its validity, the marriage should be examined as of the time it was entered into. On that precise date all the essential requisites must be present x x x. In the case before us, the evidence discloses that the marriage preceded the issuance of the marriage license by one day. The subsequent issuance of the license cannot in law, to our mind, render valid what in the eyes of the law itself was void from the beginning x x x. (Emphasis supplied)

In the 1960 case of *Merced v. Diez*,^[4] the Court held that a prior case for annulment of the second marriage on the ground of vitiated consent constitutes a prejudicial question warranting the suspension of the criminal case for bigamy.^[5] The Court declared:

Before this Court the sole question raised is whether an action to annul the second marriage is a prejudicial question in a prosecution for bigamy.

x x x

In order that a person may be held guilty of the crime of bigamy, the second and subsequent marriage must have all the essential elements of a valid marriage, were it not for the subsistence of the first marriage. This was the ruling of this Court in *People vs. Dumpo*, 62 Phil. 246, x x x.

One of the essential elements of a valid marriage is that the consent thereto of the contracting parties must be freely and voluntarily given. Without the element of consent a marriage would be illegal and void. (Section 29, Act No. 3613, otherwise known as the Marriage Law.) But the question of invalidity cannot ordinarily be decided in the criminal action for bigamy but in a civil action for annulment. Since the validity of the second marriage, subject of the action for bigamy, cannot be determined in the criminal case and since prosecution for bigamy does not lie unless the elements of the second marriage appear to exist, it is necessary that a decision in a civil action to the effect that the second marriage contains all the essentials of a marriage must first be secured.

We have, therefore, in the case at bar, the issue of the validity of the second marriage, which must be determined before hand in the civil action, before the criminal action can proceed. 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. (Emphasis supplied)

In *Zapanta v. Montesa*,^[6] decided in 1962, the Court likewise suspended the proceedings in the criminal case for bigamy because of a subsequent civil action filed by the accused to annul his second marriage on the ground of vitiated consent. The Court ruled:

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 (*People vs. Aragon*, G.R. No. L-5930, February 17, 1954). 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 (*People vs. Aragon*, *supra*). 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. On the other hand, there can be no question that the annulment of petitioner's marriage with respondent Yco on the grounds relied upon in the complaint filed in the Court of First Instance of Pampanga is within the jurisdiction of said court.

In *De la Cruz v. Ejercito*,^[7] decided in 1975, the Court, speaking through Justice Ramon C. Aquino, dismissed a bigamy case against the accused in view of a final judgment the accused obtained annulling her second marriage on the ground of vitiated consent. The Court, ruling that the annulment of the second marriage rendered the criminal case “moot and untenable,” explained:

The issue is whether the bigamy case became moot or untenable after the second marriage, on which the prosecution for bigamy is based, was annulled.

The City Fiscal of Angeles City contends that the lower court acted correctly in denying the motion to dismiss the bigamy charge. He argues that the decision in the annulment case should be set up as a defense by Milagros de la Cruz during the trial and that it would not justify the outright dismissal of the criminal case.

On the other hand, the Solicitor General manifested that the stand of Milagros de la Cruz should be sustained because one element of bigamy is that the alleged second marriage, having all the requisites, would be valid were it not for the subsistence of the first marriage (*People vs. Mora Dumpo*, 62 Phil. 246, 248; *Merced vs. Hon. Diez*, 109 Phil. 155; *Zapanta vs. Montesa*, 114 Phil. 1227).

We hold that the finding in the annulment case that the second marriage contracted by Milagros de la Cruz with Sergeant Gaccino was a nullity is determinative of her innocence and precludes the rendition of a verdict that she committed bigamy. To try the criminal case in the face of such a finding would be unwarranted. (Emphasis supplied)

These decisions of the Court declaring there is no crime of bigamy if the second marriage is void on grounds other than the existence of the first marriage merely apply the clear language and intent of Article 349 of the Revised Penal Code. This Article provides as follows:

Article 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 judgment rendered in the proper proceedings.

Under Article 349 of the Revised Penal Code, the essential elements of the crime of bigamy are:

1. The offender is legally married;

2. The marriage is not legally dissolved;
3. The offender contracts a second or subsequent marriage;
4. The second or subsequent marriage is valid except for the existence of the first marriage.

The first three elements reiterate the language of the law. The last element, the validity of the second marriage except for the existence of the first marriage, necessarily follows from the language of the law that the offender contracts a “second or subsequent marriage.”

If the second marriage is void ab initio on grounds other than the existence of the first marriage, then legally there exists no second marriage. Article 35 of the Family Code enumerates the marriages that are “void from the beginning.” The succeeding article, Article 36, declares that a marriage contracted by one psychologically incapacitated “shall likewise be void.” Article 1409 of the Civil Code declares “inexistent and void from the beginning” contracts “expressly x x x declared void by law.” Thus, a marriage contracted by one psychologically incapacitated at the time of the marriage is legally inexistent and void from the beginning. Such void marriage cannot constitute a second marriage to sustain a conviction for bigamy under Article 349 of the Revised Penal Code.

If the second marriage is void solely because of the existence of the first marriage, the nullity of the second marriage proceeds from its illegality or bigamous nature. However, if the second marriage is void on grounds other than the existence of the first marriage, the nullity does not proceed from its illegality or bigamous nature. The first situation results in the crime of bigamy while the second does not. This is clear from Article 1411 of the Civil Code which provides:

Article 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal act, both parties being in pari delicto, they shall have no action against each other, and both shall be prosecuted. x x x.

The rule shall be applicable when only one of the parties is guilty; x x x.

Thus, if the second marriage is void because of psychological incapacity, the nullity does not proceed from an illegal or criminal cause, and no prosecution could ensue. However, if the second marriage is void solely because of the existence of the first marriage, the nullity proceeds from an illegal or criminal cause, and thus prosecution should follow.

The plain and ordinary meaning of Article 349 could only be that the second marriage must be valid were it not for the existence of the first marriage. This has been the consistent interpretation of the Court for more than seven decades since the enactment of the Revised Penal Code. Text writers in criminal law have never entertained or advanced any other interpretation. There is no cogent reason to depart from the well-established jurisprudence on Article 349 of the Revised Penal Code.

Even assuming, for the sake of argument, there is doubt on the interpretation of Article 349, substantive due process of law requires a strict interpretation of Article 349 against the State and a liberal interpretation in favor of the accused. The majority opinion reverses this principle and interprets Article 349 of the Revised Penal Code strictly against the accused and liberally in favor of the State.

Article 349 of the Revised Penal Code does not state that it is immaterial whether the second marriage is valid or void ab initio. This Article does not also state that the mere act of celebration of the second marriage, while the first marriage subsists, constitutes the crime of bigamy. Article 349 speaks of a “second or subsequent marriage” which, as commonly understood and applied consistently by the Court, means a valid second marriage were it not for the existence of the first marriage.

To hold that the validity of the second marriage is immaterial, as the majority opinion so holds, would interpret Article 349 too liberally in favor of the State and too strictly against the accused. This violates the well-settled principle of statutory construction that the Court declared in *People v. Garcia*:^[8]

Criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought. (Statutory Construction, Crawford, pp. 460-462.)

The principle of statutory construction that penal laws are liberally construed in favor of the accused and strictly against the State is deeply rooted in the need to protect constitutional guarantees.^[9] This principle serves notice to the public that only those acts clearly and plainly prohibited in penal laws are subject to criminal sanctions. To expand penal laws beyond their clear and plain meaning is no longer fair notice to the public. Thus, the principle insures observance of due process of law. The principle also prevents discriminatory application of penal laws. State prosecutors have no power to broaden arbitrarily the application of penal laws beyond the plain and common understanding of the people who are subject to their penalties. Hence, the principle insures equal protection of the law.

The principle is also rooted in the need to maintain the separation of powers by insuring that the legislature, and not the judiciary, defines crimes and prescribes their penalties.^[10] As aptly stated by the U.S. Supreme Court, speaking through Chief Justice John Marshall, in *United States v. Wiltberger*.^[11]

The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislature, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment. (Emphasis supplied)

This Court has specifically applied the rule on strict interpretation of a criminal statute to the crime of bigamy. In *People v. Aragon*,^[12] decided in 1957, the Court ruled:

Appellant in this Court relies on the case of *People vs. Mendoza*, (95 Phil., 845, 50 Off. Gaz., [10] 4767). In this case the majority of this Court declared:

"The statutory provision (section 29 of the Marriage Law or Act No. 3613) 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. There is here no pretense that appellant's second marriage with Olga Lema was contracted in the belief that the first spouse, Jovita de Asis, had been absent for seven consecutive years or generally considered as dead, so as to render said marriage valid until declared null and void by a subsequent court."

We are aware of the very weighty reasons expressed by Justice Alex Reyes in his dissent in the case above-quoted. But these weighty reasons notwithstanding, the very fundamental principle of strict construction of penal laws in favor of the accused, which principle we may not ignore, seems to justify our stand in the above-cited case of *People vs. Mendoza*. 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 already adverted to. (Emphasis supplied)

The majority opinion interprets Article 349 of the Revised Penal Code to mean that a second marriage, even if void ab initio on grounds other than the existence of the first marriage, gives rise to the crime of bigamy. This dissent interprets Article 349 to mean that for the crime of bigamy to exist, the second marriage must be a valid marriage except for the existence of the first marriage. Otherwise, the language of the law would mean nothing when it expressly declares certain marriages void ab initio or void from the very beginning.

These opposing interpretations of a criminal statute call for the application of another well-established rule that as between two reasonable interpretations, the more lenient one should be applied to penal statutes. A leading English decision puts it in this wise:

If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions, we must give the more lenient one. That is the settled rule for construction of penal sections.[13]

In summary, the majority opinion reverses the well-settled doctrine that there is no bigamy if the second marriage is void on grounds other than the existence of the first marriage. The Court has consistently applied this doctrine in several cases since 1935. The majority opinion reverses this doctrine by disregarding the plain and ordinary meaning of the clear language of a criminal statute — Article 349 of the Revised Penal Code. The majority opinion then proceeds to interpret the criminal statute strictly against the accused and liberally in favor of the State. The majority opinion makes this new interpretation even as Article 349 has remained unchanged since its enactment into law on 1 January 1932. The majority opinion effectively amends the language of Article 349 of the Revised Penal Code in violation of the separation of powers.

A final word. Even before appellant Tenebro's conviction of the crime of bigamy, he had already secured a judicial declaration of nullity of his second marriage on the ground of psychological incapacity. This judicial declaration merely confirmed what the law already explicitly provides - that a marriage contracted by one psychologically incapacitated to marry is void from the very beginning and thus legally inexistent. Inexplicably, the majority opinion still holds that the second marriage exists to warrant Tenebro's conviction of the crime of bigamy.

Accordingly, I dissent from the majority opinion and vote to grant the petition.

[1] 62 Phil. 246 (1935).

[2] 95 Phil. 845 (1954).

[3] 51 O.G. 4079, 14 February 1955.

[4] 109 Phil. 155(1960).

[5] In the 1954 case of *People v. Aragon* (94 Phil. 357), the Court refused to consider as a prejudicial question the action to annul the second marriage because the accused was the one who employed force and intimidation on the woman in the second marriage. The Court said that the accused "may not use his own malfeasance to defeat the action based on his criminal act." The Court also said that if the woman in the second marriage "were she the one charged with bigamy, [she] could perhaps raise said force or intimidation as a defense, because she may not be considered as having freely and voluntarily committed the act if she was forced to the marriage by intimidation."

[6] No. L-14534, 28 February 1962, 4 SCRA 510.

[7] No. L-40895, 6 November 1975, 68 SCRA 1.

[8] 85 Phil. 651(1950).

[9] ESKRIDGE, JR., FRICKLEY AND GARRET, LEGISLATION AND STATUTORY INTERPRETATION 362 (2000).

[10] Ibid., p. 363.

[11] 18 U.S. 76(1820).

[12] 100 Phil. 1033(1957).

[13] Tuck & Sons v. Priester, 19 QBD 629 (1887), cited in Cross on Statutory Construction, p. 172, 3rd Edition (1995).

SEPARATE DISSENTING OPINION

CALLEJO, SR., J.:

I vote to grant pro hac vice the petition.

The prosecution was burdened to prove beyond reasonable doubt the corpus delicti, namely, all the elements of the crime.[1] In this case, the prosecution adduced evidence that the petitioner contracted marriage with Hilda and during the subsistence of said marriage, he contracted a second marriage with the private respondent. However, the petitioner adduced in evidence the decision of the Regional Trial Court in Civil Case No. AU-885 before the court a quo rendered judgment convicting the petitioner of bigamy declaring null and void ab initio the petitioner's marriage with the private respondent on the ground of the latter's psychological incapacity. Since the second marriage is null and void ab initio, such marriage in contemplation of criminal law never existed and for that reason, one of the essential elements of bigamy has disappeared. To quote Groizard:

... El matrimonio entonces, en realidad, no existe, pierde toda fuerza en virtud del vicio intrinseco que lleva, y, por tanto, uno de los elementos del delito desaparece y la declaracion de inculpabilidad precede. Esto que es logico y llano en el terreno de los principios, no puede, sin embargo, admitirse sin ciertas restricciones en la practica. ...[2]

Whether or not the decision of the RTC declaring the second marriage null and void ab initio, is erroneous is beside the point. Neither the private respondent nor the State, through the Office of the Solicitor General, appealed the decision of the court. Entry of judgment was made of record before the court a quo rendered its decision. Hence, both the State and the private respondent are bound by said decision.

[1] Fuquay v. State of Alabama, 56 American Law Reports, 1264 (1927).

[2] Groizard, ElCodigo Penal, 5th ed., Vol. 5, p. 599.

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