

EDUARDO P. MANUEL, PETITIONER, VS. PROMULGATED: PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. NO. 165842. November 29, 2005*

Ponente: CALLEJO, SR., J.

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Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 26877, affirming the Decision[2] of the Regional Trial Court (RTC) of Baguio City, Branch 3, convicting Eduardo P. Manuel of bigamy in Criminal Case No. 19562-R.

Eduardo was charged with bigamy in an Information filed on November 7, 2001, the accusatory portion of which reads:

That on or about the 22[nd] day of April, 1996, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused EDUARDO P. MANUEL, being then previously and legally married to RUBYLUS [GAÑA] and without the said marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second marriage with TINA GANDALERA-MANUEL, herein complainant, who does not know the existence of the first marriage of said EDUARDO P. MANUEL to Rubylus [Gaña].

CONTRARY TO LAW. [3]

The prosecution adduced evidence that on July 28, 1975, Eduardo was married to Rubylus Gaña before Msgr. Feliciano Santos in Makati, which was then still a municipality of the Province of Rizal.[4] He met the private complainant Tina B. Gandalera in Dagupan City sometime in January 1996. She stayed in Bonuan, Dagupan City for two days looking for a friend. Tina was then 21 years old, a Computer Secretarial student, while Eduardo was 39. Afterwards, Eduardo went to Baguio City to visit her. Eventually, as one thing led to another, they went to a motel where, despite Tina's resistance, Eduardo succeeded in having his way with her. Eduardo proposed marriage on several occasions, assuring her that he was single. Eduardo even brought his parents to Baguio City to meet Tina's parents, and was assured by them that their son was still single.

Tina finally agreed to marry Eduardo sometime in the first week of March 1996. They were married on April 22, 1996 before Judge Antonio C. Reyes, the Presiding Judge of the RTC of Baguio City, Branch 61.[5] It appeared in their marriage contract that Eduardo was "single."

The couple was happy during the first three years of their married life. Through their joint efforts, they were able to build their home in Cypress Point, Irisan, Baguio City. However, starting 1999, Manuel started making himself scarce and went to their house only twice or thrice a year. Tina was jobless, and whenever she asked money from Eduardo, he would slap her.[6] Sometime in January 2001, Eduardo took all his clothes, left, and did not return. Worse, he stopped giving financial support.

Sometime in August 2001, Tina became curious and made inquiries from the National Statistics Office (NSO) in

Manila where she learned that Eduardo had been previously married. She secured an NSO-certified copy of the marriage contract.[7] She was so embarrassed and humiliated when she learned that Eduardo was in fact already married when they exchanged their own vows.[8]

For his part, Eduardo testified that he met Tina sometime in 1995 in a bar where she worked as a Guest Relations Officer (GRO). He fell in love with her and married her. He informed Tina of his previous marriage to Rubylus Gaña, but she nevertheless agreed to marry him. Their marital relationship was in order until this one time when he noticed that she had a "love-bite" on her neck. He then abandoned her. Eduardo further testified that he declared he was "single" in his marriage contract with Tina because he believed in good faith that his first marriage was invalid. He did not know that he had to go to court to seek for the nullification of his first marriage before marrying Tina.

Eduardo further claimed that he was only forced to marry his first wife because she threatened to commit suicide unless he did so. Rubylus was charged with estafa in 1975 and thereafter imprisoned. He visited her in jail after three months and never saw her again. He insisted that he married Tina believing that his first marriage was no longer valid because he had not heard from Rubylus for more than 20 years.

After trial, the court rendered judgment on July 2, 2002 finding Eduardo guilty beyond reasonable doubt of bigamy. He was sentenced to an indeterminate penalty of from six (6) years and ten (10) months, as minimum, to ten (10) years, as maximum, and directed to indemnify the private complainant Tina Gandalera the amount of P200,000.00 by way of moral damages, plus costs of suit.[9]

The trial court ruled that the prosecution was able to prove beyond reasonable doubt all the elements of bigamy under Article 349 of the Revised Penal Code. It declared that Eduardo's belief, that his first marriage had been dissolved because of his first wife's 20-year absence, even if true, did not exculpate him from liability for bigamy. Citing the ruling of this Court in *People v. Bitdu*,[10] the trial court further ruled that even if the private complainant had known that Eduardo had been previously married, the latter would still be criminally liable for bigamy.

Eduardo appealed the decision to the CA. He alleged that he was not criminally liable for bigamy because when he married the private complainant, he did so in good faith and without any malicious intent. He maintained that at the time that he married the private complainant, he was of the honest belief that his first marriage no longer subsisted. He insisted that conformably to Article 3 of the Revised Penal Code, there must be malice for one to be criminally liable for a felony. He was not motivated by malice in marrying the private complainant because he did so only out of his overwhelming desire to have a fruitful marriage. He posited that the trial court should have taken into account Article 390 of the New Civil Code. To support his view, the appellant cited the rulings of this Court in *United States v. Peñalosa*[11] and *Manahan, Jr. v. Court of Appeals*. [12]

The Office of the Solicitor General (OSG) averred that Eduardo's defense of good faith and reliance on the Court's ruling in *United States v. Enriquez*[13] were misplaced; what is applicable is Article 41 of the Family Code, which amended Article 390 of the Civil Code. Citing the ruling of this Court in *Republic v. Nolasco*,[14] the OSG further posited that as provided in Article 41 of the Family Code, there is a need for a judicial declaration of presumptive death of the absent spouse to enable the present spouse to marry. Even assuming that the first marriage was void, the parties thereto should not be permitted to judge for themselves the nullity of the marriage; the matter should be submitted to the proper court for resolution. Moreover, the OSG maintained, the private complainant's knowledge of the first marriage would not afford any relief since bigamy is an offense against the State and not just against the private complainant.

However, the OSG agreed with the appellant that the penalty imposed by the trial court was erroneous and sought

the affirmance of the decision appealed from with modification.

On June 18, 2004, the CA rendered judgment affirming the decision of the RTC with modification as to the penalty of the accused. It ruled that the prosecution was able to prove all the elements of bigamy. Contrary to the contention of the appellant, Article 41 of the Family Code should apply. Before Manuel could lawfully marry the private complainant, there should have been a judicial declaration of Gaña's presumptive death as the absent spouse. The appellate court cited the rulings of this Court in *Mercado v. Tan*[15] and *Domingo v. Court of Appeals*[16] to support its ruling. The dispositive portion of the decision reads:

WHEREFORE, in the light of the foregoing, the Decision promulgated on July 31, 2002 is hereby MODIFIED to reflect, as it hereby reflects, that accused-appellant is sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to ten (10) years of prision mayor as maximum. Said Decision is AFFIRMED in all other respects.

SO ORDERED.[17]

Eduardo, now the petitioner, filed the instant petition for review on certiorari, insisting that:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW WHEN IT RULED THAT PETITIONER'S FIRST WIFE CANNOT BE LEGALLY PRESUMED DEAD UNDER ARTICLE 390 OF THE CIVIL CODE AS THERE WAS NO JUDICIAL DECLARATION OF PRESUMPTIVE DEATH AS PROVIDED FOR UNDER ARTICLE 41 OF THE FAMILY CODE.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW WHEN IT AFFIRMED THE AWARD OF PHP200,000.00 AS MORAL DAMAGES AS IT HAS NO BASIS IN FACT AND IN LAW.[18]

The petitioner maintains that the prosecution failed to prove the second element of the felony, i.e., that the marriage has not been legally dissolved or, in case his/her spouse is absent, the absent spouse could not yet be presumed dead under the Civil Code. He avers that when he married Gandalera in 1996, Gaña had been "absent" for 21 years since 1975; under Article 390 of the Civil Code, she was presumed dead as a matter of law. He points out that, under the first paragraph of Article 390 of the Civil Code, one who has been absent for seven years, whether or not he/she is still alive, shall be presumed dead for all purposes except for succession, while the second paragraph refers to the rule on legal presumption of death with respect to succession.

The petitioner asserts that the presumptive death of the absent spouse arises by operation of law upon the satisfaction of two requirements: the specified period and the present spouse's reasonable belief that the absentee is dead. He insists that he was able to prove that he had not heard from his first wife since 1975 and that he had no knowledge of her whereabouts or whether she was still alive; hence, under Article 41 of the Family Code, the presumptive death of Gaña had arisen by operation of law, as the two requirements of Article 390 of the Civil Code are present. The petitioner concludes that he should thus be acquitted of the crime of bigamy.

The petitioner insists that except for the period of absences provided for in Article 390 of the Civil Code, the rule therein on legal presumptions remains valid and effective. Nowhere under Article 390 of the Civil Code does it require that there must first be a judicial declaration of death before the rule on presumptive death would apply. He further asserts that contrary to the rulings of the trial and appellate courts, the requirement of a judicial declaration of presumptive death under Article 41 of the Family Code is only a requirement for the validity of the subsequent or second marriage.

The petitioner, likewise, avers that the trial court and the CA erred in awarding moral damages in favor of the private complainant. The private complainant was a "GRO" before he married her, and even knew that he was already married. He genuinely loved and took care of her and gave her financial support. He also pointed out that she had an illicit relationship with a lover whom she brought to their house.

In its comment on the petition, the OSG maintains that the decision of the CA affirming the petitioner's conviction is in accord with the law, jurisprudence and the evidence on record. To bolster its claim, the OSG cited the ruling of this Court in *Republic v. Nolasco*.^[19]

The petition is denied for lack of merit.

Article 349 of the Revised Penal Code, which defines and penalizes bigamy, reads:

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.

The provision was taken from Article 486 of the Spanish Penal Code, to wit:

El que contrajere Segundo o ulterior matrimonio sin hallarse legítimamente disuelto el anterior, será castigado con la pena de prision mayor. xxx

The reason why bigamy is considered a felony is to preserve and ensure the juridical tie of marriage established by law.^[20] The phrase "or before the absent spouse had been declared presumptively dead by means of a judgment rendered in the proper proceedings" was incorporated in the Revised Penal Code because the drafters of the law were of the impression that "in consonance with the civil law which provides for the presumption of death after an absence of a number of years, the judicial declaration of presumed death like annulment of marriage should be a justification for bigamy."^[21]

For the accused to be held guilty of bigamy, the prosecution is burdened to prove the felony: (a) he/she has been legally married; and (b) he/she contracts a subsequent marriage without the former marriage having been lawfully dissolved. The felony is consummated on the celebration of the second marriage or subsequent marriage.^[22] It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage.^[23] Viada avers that a third element of the crime is that the second marriage must be entered into with fraudulent intent (*intencion fraudulente*) which is an essential element of a felony by *dolo*.^[24] On the other hand, Cuello Calon is of the view that there are only two elements of bigamy: (1) the existence of a marriage that has not been lawfully dissolved; and (2) the celebration of a second marriage. It does not matter whether the first marriage is void or voidable because such marriages have juridical effects until lawfully dissolved by a court of competent jurisdiction.^[25] As the Court ruled in *Domingo v. Court of Appeals*^[26] and *Mercado v. Tan*,^[27] under the Family Code of the Philippines, the judicial declaration of nullity of a previous marriage is a defense.

In his commentary on the Revised Penal Code, Albert is of the same view as Viada and declared that there are three (3) elements of bigamy: (1) an undissolved marriage; (2) a new marriage; and (3) fraudulent intention constituting the felony of the act.^[28] He explained that:

... This last element is not stated in Article 349, because it is undoubtedly incorporated in the principle antedating all codes, and, constituting one of the landmarks of our Penal Code, that, where there is no willfulness there is no crime. There is no willfulness if the subject believes that the former marriage has been dissolved; and this must be supported by very strong evidence, and if this be produced, the act shall be deemed not to constitute a crime. Thus, a person who contracts a second marriage in the reasonable and well-founded

belief that his first wife is dead, because of the many years that have elapsed since he has had any news of her whereabouts, in spite of his endeavors to find her, cannot be deemed guilty of the crime of bigamy, because there is no fraudulent intent which is one of the essential elements of the crime.[29]

As gleaned from the Information in the RTC, the petitioner is charged with bigamy, a felony by dolo (deceit). Article 3, paragraph 2 of the Revised Penal Code provides that there is deceit when the act is performed with deliberate intent. Indeed, a felony cannot exist without intent. Since a felony by dolo is classified as an intentional felony, it is deemed voluntary.[30] Although the words "with malice" do not appear in Article 3 of the Revised Penal Code, such phrase is included in the word "voluntary." [31]

Malice is a mental state or condition prompting the doing of an overt act without legal excuse or justification from which another suffers injury.[32] When the act or omission defined by law as a felony is proved to have been done or committed by the accused, the law presumes it to have been intentional.[33] Indeed, it is a legal presumption of law that every man intends the natural or probable consequence of his voluntary act in the absence of proof to the contrary, and such presumption must prevail unless a reasonable doubt exists from a consideration of the whole evidence.[34]

For one to be criminally liable for a felony by dolo, there must be a confluence of both an evil act and an evil intent. *Actus non facit reum, nisi mens sit rea*. [35]

In the present case, the prosecution proved that the petitioner was married to Gaña in 1975, and such marriage was not judicially declared a nullity; hence, the marriage is presumed to subsist.[36] The prosecution also proved that the petitioner married the private complainant in 1996, long after the effectivity of the Family Code.

The petitioner is presumed to have acted with malice or evil intent when he married the private complainant. As a general rule, mistake of fact or good faith of the accused is a valid defense in a prosecution for a felony by dolo; such defense negates malice or criminal intent. However, ignorance of the law is not an excuse because everyone is presumed to know the law. *Ignorantia legis neminem excusat*.

It was the burden of the petitioner to prove his defense that when he married the private complainant in 1996, he was of the well-grounded belief that his first wife was already dead, as he had not heard from her for more than 20 years since 1975. He should have adduced in evidence a decision of a competent court declaring the presumptive death of his first wife as required by Article 349 of the Revised Penal Code, in relation to Article 41 of the Family Code. Such judicial declaration also constitutes proof that the petitioner acted in good faith, and would negate criminal intent on his part when he married the private complainant and, as a consequence, he could not be held guilty of bigamy in such case. The petitioner, however, failed to discharge his burden.

The phrase "or before the absent spouse has been declared presumptively dead by means of a judgment rendered on the proceedings" in Article 349 of the Revised Penal Code was not an aggroupment of empty or useless words. The requirement for a judgment of the presumptive death of the absent spouse is for the benefit of the spouse present, as protection from the pains and the consequences of a second marriage, precisely because he/she could be charged and convicted of bigamy if the defense of good faith based on mere testimony is found incredible.

The requirement of judicial declaration is also for the benefit of the State. Under Article II, Section 12 of the Constitution, the "State shall protect and strengthen the family as a basic autonomous social institution." Marriage is a social institution of the highest importance. Public policy, good morals and the interest of society require that the marital relation should be surrounded with every safeguard and its severance only in the manner prescribed and the causes specified by law.[37] The laws regulating civil marriages are necessary to serve the interest, safety, good order, comfort or general welfare of the community and the parties can waive nothing essential to the validity of the proceedings. A civil marriage anchors an ordered society by encouraging stable relationships over

transient ones; it enhances the welfare of the community.

In a real sense, there are three parties to every civil marriage; two willing spouses and an approving State. On marriage, the parties assume new relations to each other and the State touching nearly on every aspect of life and death. The consequences of an invalid marriage to the parties, to innocent parties and to society, are so serious that the law may well take means calculated to ensure the procurement of the most positive evidence of death of the first spouse or of the presumptive death of the absent spouse[38] after the lapse of the period provided for under the law. One such means is the requirement of the declaration by a competent court of the presumptive death of an absent spouse as proof that the present spouse contracts a subsequent marriage on a well-grounded belief of the death of the first spouse. Indeed, "men readily believe what they wish to be true," is a maxim of the old jurists. To sustain a second marriage and to vacate a first because one of the parties believed the other to be dead would make the existence of the marital relation determinable, not by certain extrinsic facts, easily capable of forensic ascertainment and proof, but by the subjective condition of individuals.[39] Only with such proof can marriage be treated as so dissolved as to permit second marriages.[40] Thus, Article 349 of the Revised Penal Code has made the dissolution of marriage dependent not only upon the personal belief of parties, but upon certain objective facts easily capable of accurate judicial cognizance,[41] namely, a judgment of the presumptive death of the absent spouse.

The petitioner's sole reliance on Article 390 of the Civil Code as basis for his acquittal for bigamy is misplaced.

Articles 390 and 391 of the Civil Code provide –

Art. 390. After an absence of seven years, it being unknown whether or not, the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.

Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

(1)

A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;

(2)

A person in the armed forces who has taken part in war, and has been missing for four years;

(3)

A person who has been in danger of death under other circumstances and his existence has not been known for four years.

The presumption of death of the spouse who had been absent for seven years, it being unknown whether or not the absentee still lives, is created by law and arises without any necessity of judicial declaration.[42] However, Article 41 of the Family Code, which amended the foregoing rules on presumptive death, reads:

Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Court for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.[43]

With the effectivity of the Family Code,[44] the period of seven years under the first paragraph of Article 390 of the Civil Code was reduced to four consecutive years. Thus, before the spouse present may contract a subsequent marriage, he or she must institute summary proceedings for the declaration of the presumptive death of the absentee spouse,[45] without prejudice to the effect of the reappearance of the absentee spouse. As explained by this Court in *Armas v. Calisterio*:[46]

In contrast, under the 1988 Family Code, in order that a subsequent bigamous marriage may exceptionally be considered valid, the following conditions must concur, viz.: (a) The prior spouse of the contracting party must have been absent for four consecutive years, or two years where there is danger of death under the circumstances stated in Article 391 of the Civil Code at the time of disappearance; (b) the spouse present has a well-founded belief that the absent spouse is already dead; and (c) there is, unlike the old rule, a judicial declaration of presumptive death of the absentee for which purpose the spouse present can institute a summary proceeding in court to ask for that declaration. The last condition is consistent and in consonance with the requirement of judicial intervention in subsequent marriages as so provided in Article 41, in relation to Article 40, of the Family Code.

The Court rejects petitioner's contention that the requirement of instituting a petition for declaration of presumptive death under Article 41 of the Family Code is designed merely to enable the spouse present to contract a valid second marriage and not for the acquittal of one charged with bigamy. Such provision was designed to harmonize civil law and Article 349 of the Revised Penal Code, and put to rest the confusion spawned by the rulings of this Court and comments of eminent authorities on Criminal Law.

As early as March 6, 1937, this Court ruled in *Jones v. Hortiguella*[47] that, for purposes of the marriage law, it is not necessary to have the former spouse judicially declared an absentee before the spouse present may contract a subsequent marriage. It held that the declaration of absence made in accordance with the provisions of the Civil Code has for its sole purpose the taking of the necessary precautions for the administration of the estate of the absentee. For the celebration of civil marriage, however, the law only requires that the former spouse had been absent for seven consecutive years at the time of the second marriage, that the spouse present does not know his or her former spouse to be living, that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration of the marriage.[48] In *In Re Szatraw*,[49] the Court declared that a judicial declaration that a person is presumptively dead, because he or she had been unheard from in seven years, being a presumption *juris tantum* only, subject to contrary proof, cannot reach the stage of finality or become final; and that proof of actual death of the person presumed dead being unheard from in seven years, would have to be made in another proceeding to have such particular fact finally determined. The Court ruled that if a judicial decree declaring a person presumptively dead because he or she had not been heard from in seven years cannot become final and executory even after the lapse of the reglementary period within which an appeal may be taken, for such presumption is still disputable and remains subject to contrary proof, then a petition for such a declaration is useless, unnecessary, superfluous and of no benefit to the petitioner. The Court stated that it should not waste its valuable time and be made to perform a superfluous and meaningless act.[50] The Court also took

note that a petition for a declaration of the presumptive death of an absent spouse may even be made in collusion with the other spouse.

In *Lukban v. Republic of the Philippines*,^[51] the Court declared that the words "proper proceedings" in Article 349 of the Revised Penal Code can only refer to those authorized by law such as Articles 390 and 391 of the Civil Code which refer to the administration or settlement of the estate of a deceased person. In *Gue v. Republic of the Philippines*,^[52] the Court rejected the contention of the petitioner therein that, under Article 390 of the Civil Code, the courts are authorized to declare the presumptive death of a person after an absence of seven years. The Court reiterated its rulings in *Szatrav, Lukban and Jones*.

Former Chief Justice Ramon C. Aquino was of the view that "the provision of Article 349 or "before the absent spouse has been declared presumptively dead by means of a judgment reached in the proper proceedings" is erroneous and should be considered as not written. He opined that such provision presupposes that, if the prior marriage has not been legally dissolved and the absent first spouse has not been declared presumptively dead in a proper court proceedings, the subsequent marriage is bigamous. He maintains that the supposition is not true.^[53] A second marriage is bigamous only when the circumstances in paragraphs 1 and 2 of Article 83 of the Civil Code are not present.^[54] Former Senator Ambrosio Padilla was, likewise, of the view that Article 349 seems to require judicial decree of dissolution or judicial declaration of absence but even with such decree, a second marriage in good faith will not constitute bigamy. He posits that a second marriage, if not illegal, even if it be annulable, should not give rise to bigamy.^[55] Former Justice Luis B. Reyes, on the other hand, was of the view that in the case of an absent spouse who could not yet be presumed dead according to the Civil Code, the spouse present cannot be charged and convicted of bigamy in case he/she contracts a second marriage.^[56]

The Committee tasked to prepare the Family Code proposed the amendments of Articles 390 and 391 of the Civil Code to conform to Article 349 of the Revised Penal Code, in that, in a case where a spouse is absent for the requisite period, the present spouse may contract a subsequent marriage only after securing a judgment declaring the presumptive death of the absent spouse to avoid being charged and convicted of bigamy; the present spouse will have to adduce evidence that he had a well-founded belief that the absent spouse was already dead.^[57] Such judgment is proof of the good faith of the present spouse who contracted a subsequent marriage; thus, even if the present spouse is later charged with bigamy if the absentee spouse reappears, he cannot be convicted of the crime. As explained by former Justice Alicia Sempio-Diy:

... Such rulings, however, conflict with Art. 349 of the Revised Penal Code providing that the present spouse must first ask for a declaration of presumptive death of the absent spouse in order not to be guilty of bigamy in case he or she marries again.

The above Article of the Family Code now clearly provides that for the purpose of the present spouse contracting a second marriage, he or she must file a summary proceeding as provided in the Code for the declaration of the presumptive death of the absentee, without prejudice to the latter's reappearance. This provision is intended to protect the present spouse from a criminal prosecution for bigamy under Art. 349 of the Revised Penal Code because with the judicial declaration that the missing spouses presumptively dead, the good faith of the present spouse in contracting a second marriage is already established.^[58]

Of the same view is former Dean Ernesto L. Pineda (now Undersecretary of Justice) who wrote that things are now clarified. He says judicial declaration of presumptive death is now authorized for purposes of remarriage. The present spouse must institute a summary proceeding for declaration of presumptive death of the absentee, where the ordinary rules of procedure in trial will not be followed. Affidavits will suffice, with possible clarificatory examinations of affiants if the Judge finds it necessary for a full grasp of the facts. The judgment declaring an absentee as presumptively dead is without prejudice to the effect of reappearance of the said

absentee.

Dean Pineda further states that before, the weight of authority is that the clause "before the absent spouse has been declared presumptively dead x x x" should be disregarded because of Article 83, paragraph 3 of the Civil Code. With the new law, there is a need to institute a summary proceeding for the declaration of the presumptive death of the absentee, otherwise, there is bigamy.[59]

According to Retired Supreme Court Justice Florenz D. Regalado, an eminent authority on Criminal Law, in some cases where an absentee spouse is believed to be dead, there must be a judicial declaration of presumptive death, which could then be made only in the proceedings for the settlement of his estate.[60] Before such declaration, it was held that the remarriage of the other spouse is bigamous even if done in good faith.[61] Justice Regalado opined that there were contrary views because of the ruling in *Jones* and the provisions of Article 83(2) of the Civil Code, which, however, appears to have been set to rest by Article 41 of the Family Code, "which requires a summary hearing for the declaration of presumptive death of the absent spouse before the other spouse can remarry."

Under Article 238 of the Family Code, a petition for a declaration of the presumptive death of an absent spouse under Article 41 of the Family Code may be filed under Articles 239 to 247 of the same Code.[62]

On the second issue, the petitioner, likewise, faults the trial court and the CA for awarding moral damages in favor of the private complainant. The petitioner maintains that moral damages may be awarded only in any of the cases provided in Article 2219 of the Civil Code, and bigamy is not one of them. The petitioner asserts that the appellate court failed to apply its ruling in *People v. Bondoc*,[63] where an award of moral damages for bigamy was disallowed. In any case, the petitioner maintains, the private complainant failed to adduce evidence to prove moral damages.

The appellate court awarded moral damages to the private complainant on its finding that she adduced evidence to prove the same. The appellate court ruled that while bigamy is not included in those cases enumerated in Article 2219 of the Civil Code, it is not proscribed from awarding moral damages against the petitioner. The appellate court ruled that it is not bound by the following ruling in *People v. Bondoc*:

... Pero si en dichos asuntos se adjudicaron daños, ello se debió indedublamante porque el artículo 2219 del Código Civil de Filipinas autoriza la adjudicación de daños morales en los delitos de estupro, rapto, violación, adulterio o concubinato, y otros actos lascivos, sin incluir en esta enumeración el delito de bigamia. No existe, por consiguiente, base legal para adjudicar aquí los daños de P5,000.00 arriba mencionados.[64]

The OSG posits that the findings and ruling of the CA are based on the evidence and the law. The OSG, likewise, avers that the CA was not bound by its ruling in *People v. Rodeo*.

The Court rules against the petitioner.

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.[65] An award for moral damages requires the confluence of the following conditions: first, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; second, there must be culpable act or omission factually established; third, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and fourth, the award of damages is predicated on any of the cases stated in Article 2219 or Article 2220 of the Civil Code.[66]

Moral damages may be awarded in favor of the offended party only in criminal cases enumerated in Article 2219,

paragraphs 1, 3, 4, 5 and 7 of the Civil Code and analogous cases, viz.:

Art. 2219. Moral damages may be recovered in the following and analogous cases.

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34 and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article in the order named.

Thus, the law does not intend that moral damages should be awarded in all cases where the aggrieved party has suffered mental anguish, fright, moral anxieties, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury arising out of an act or omission of another, otherwise, there would not have been any reason for the inclusion of specific acts in Article 2219[67] and analogous cases (which refer to those cases bearing analogy or resemblance, corresponds to some others or resembling, in other respects, as in form, proportion, relation, etc.)[68]

Indeed, bigamy is not one of those specifically mentioned in Article 2219 of the Civil Code in which the offender may be ordered to pay moral damages to the private complainant/offended party. Nevertheless, the petitioner is liable to the private complainant for moral damages under Article 2219 in relation to Articles 19, 20 and 21 of the Civil Code.

According to Article 19, "every person must, in the exercise of his rights and in the performance of his act with justice, give everyone his due, and observe honesty and good faith." This provision contains what is commonly referred to as the principle of abuse of rights, and sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. The standards are the following: act with justice; give everyone his due; and observe honesty and good faith. The elements for abuse of rights are: (a) there is a legal right or duty; (b) exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.[69]

Article 20 speaks of the general sanctions of all other provisions of law which do not especially provide for its own sanction. When a right is exercised in a manner which does not conform to the standards set forth in the said provision and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be responsible.[70] If the provision does not provide a remedy for its violation, an action for damages under either Article 20 or Article 21 of the Civil Code would be proper. Article 20 provides that "every person who, contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same." On the other hand, Article 21 provides that "any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damages." The latter provision is adopted to remedy "the countless gaps in the statutes which leave so many victims of moral wrongs helpless, even though they have actually suffered material and moral injury should vouchsafe adequate legal remedy for that untold number of moral wrongs which it is impossible for human foresight to prove for specifically in the

statutes." Whether or not the principle of abuse of rights has been violated resulting in damages under Article 20 or Article 21 of the Civil Code or other applicable provisions of law depends upon the circumstances of each case.[71]

In the present case, the petitioner courted the private complainant and proposed to marry her. He assured her that he was single. He even brought his parents to the house of the private complainant where he and his parents made the same assurance – that he was single. Thus, the private complainant agreed to marry the petitioner, who even stated in the certificate of marriage that he was single. She lived with the petitioner and dutifully performed her duties as his wife, believing all the while that he was her lawful husband. For two years or so until the petitioner heartlessly abandoned her, the private complainant had no inkling that he was already married to another before they were married.

Thus, the private complainant was an innocent victim of the petitioner's chicanery and heartless deception, the fraud consisting not of a single act alone, but a continuous series of acts. Day by day, he maintained the appearance of being a lawful husband to the private complainant, who changed her status from a single woman to a married woman, lost the consortium, attributes and support of a single man she could have married lawfully and endured mental pain and humiliation, being bound to a man who it turned out was not her lawful husband.[72]

The Court rules that the petitioner's collective acts of fraud and deceit before, during and after his marriage with the private complainant were willful, deliberate and with malice and caused injury to the latter. That she did not sustain any physical injuries is not a bar to an award for moral damages. Indeed, in *Morris v. Macnab*, [73] the New Jersey Supreme Court ruled:

xxx The defendant cites authorities which indicate that, absent physical injuries, damages for shame, humiliation, and mental anguish are not recoverable where the actor is simply negligent. See *Prosser*, supra, at p. 180; 2 *Harper & James, Torts*, 1031 (1956). But the authorities all recognize that where the wrong is willful rather than negligent, recovery may be had for the ordinary, natural, and proximate consequences though they consist of shame, humiliation, and mental anguish. See *Spiegel v. Evergreen Cemetery Co.*, 117 NJL 90, 94, 186 A 585 (Sup. Ct. 1936); *Kuzma v. Millinery Workers, etc.*, Local 24, 27 N.J. Super, 579, 591, 99 A.2d 833 (App. Div. 1953); *Prosser*, supra, at p. 38. Here the defendant's conduct was not merely negligent, but was willfully and maliciously wrongful. It was bound to result in shame, humiliation, and mental anguish for the plaintiff, and when such result did ensue the plaintiff became entitled not only to compensatory but also to punitive damages. See *Spiegel v. Evergreen Cemetery Co.*, supra; *Kuzma v. Millinery Workers, etc.*, Local 24, supra. CF. Note, "Exemplary Damages in the Law of Torts," 70 Harv. L. Rev. 517 (1957). The plaintiff testified that because of the defendant's bigamous marriage to her and the attendant publicity she not only was embarrassed and "ashamed to go out" but "couldn't sleep" but "couldn't eat," had terrific headaches" and "lost quite a lot of weight." No just basis appears for judicial interference with the jury's reasonable allowance of \$1,000 punitive damages on the first count. See *Cabakov v. Thatcher*, 37 N.J. Super 249, 117 A.2d 298 (App. Div. [74] 1955).

The Court thus declares that the petitioner's acts are against public policy as they undermine and subvert the family as a social institution, good morals and the interest and general welfare of society.

Because the private complainant was an innocent victim of the petitioner's perfidy, she is not barred from claiming moral damages. Besides, even considerations of public policy would not prevent her from recovery. As held in *Jekshewitz v. Groswald*: [75]

Where a person is induced by the fraudulent representation of another to do an act which, in consequence of such misrepresentation, he believes to be neither illegal nor immoral, but which is in fact a criminal offense, he has a right of action against the person so inducing him for damages sustained by him in consequence of his having done such act. *Burrows v. Rhodes*, [1899] 1 Q.B. 816. In *Cooper v. Cooper*, 147 Mass. 370, 17 N.E.

892, 9 Am. St. Rep. 721, the court said that a false representation by the defendant that he was divorced from his former wife, whereby the plaintiff was induced to marry him, gave her a remedy in tort for deceit. It seems to have been assumed that the fact that she had unintentionally violated the law or innocently committed a crime by cohabiting with him would be no bar to the action, but rather that it might be a ground for enhancing her damages. The injury to the plaintiff was said to be in her being led by the promise to give the fellowship and assistance of a wife to one who was not her husband and to assume and act in a relation and condition that proved to be false and ignominious. Damages for such an injury were held to be recoverable in *Sherman v. Rawson*, 102 Mass. 395 and *Kelley v. Riley*, 106 Mass. 339, 343, 8 Am. Rep. 336.

Furthermore, in the case at bar the plaintiff does not base her cause of action upon any transgression of the law by herself but upon the defendant's misrepresentation. The criminal relations which followed, innocently on her part, were but one of the incidental results of the defendant's fraud for which damages may be assessed.

[7] Actions for deceit for fraudulently inducing a woman to enter into the marriage relation have been maintained in other jurisdictions. *Sears v. Wegner*, 150 Mich. 388, 114 N.W. 224, 17 L.R. A. (N.S.) 819; *Larson v. McMillan*, 99 Wash. 626, 170 P. 324; *Blossom v. Barrett*, 37 N.Y. 434, 97 Am. Dec. 747; *Morril v. Palmer*, 68 Vt. 1, 33 A. 829, 33 L.R.A. 411. Considerations of public policy would not prevent recovery where the circumstances are such that the plaintiff was conscious of no moral turpitude, that her illegal action was induced solely by the defendant's misrepresentation, and that she does not base her cause of action upon any transgression of the law by herself. Such considerations distinguish this case from cases in which the court has refused to lend its aid to the enforcement of a contract illegal on its face or to one who has consciously and voluntarily become a party to an illegal act upon which the cause of action is founded. *Szadiwicz v. Cantor*, 257 Mass. 518, 520, 154 N.E. 251, 49 A. L. R. 958.[76]

Considering the attendant circumstances of the case, the Court finds the award of P200,000.00 for moral damages to be just and reasonable.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The assailed decision of the Court of Appeals is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Rebecca de Guia-Salvador, concurring; rollo, pp. 28-41.

[2] Penned by Judge Fernando Vil Pamintuan.

[3] Records, p. 1.

[4] Exhibit "B," records, p. 7.

[5] Exhibit "A," id. at 6.

[6] TSN, April 23, 2002, p. 15.

[7] Exhibit "B," records, p. 7.

[8] TSN, April 23, 2002, p. 15.

[9] Records, pp. 111-116.

[10] 58 Phil. 817 (1933).

[11] 1 Phil. 109 (1902).

[12] G.R. No. 111656, March 20, 1996, 255 SCRA 202.

[13] 32 Phil 202 (1915).

[14] G.R. No. 94053, March 17, 1993, 220 SCRA 20.

[15] G.R. No. 137110, August 1, 2000, 337 SCRA 122.

[16] G.R. No. 104818, September 17, 1993, 226 SCRA 572.

[17] Rollo, p. 41.

[18] Rollo, pp. 14-15.

[19] Supra, at note 14.

[20] CUELLO CALON, DERECHO PENAL REFORMADO, VOL. V, 627.

[21] AQUINO, THE REVISED PENAL CODE, VOL. III, 497 (1988 ed.) (emphasis supplied).

[22] Id. at 634.

[23] People v. Dumpo, 62 Phil. 247 (1935).

[24] ... "Tres son los elementos esenciales del mismo; el vinculo matrimonial anterior, la celebraci3n de nuevo matrimonio antes de la disoluci3n de ese vinculo anterior, y por ultimo, la intenci3n fraudulenta, que constituye la criminalidad misma del acto. Este ultimo elemento no lo consigna el articulo, por hallarse indudablemente embebido en ese principio anterior a todos los Codigos, e inscrito en el frontispicio del nuestro (Art. I.), que donde no hay voluntad, no hay delito. xxx" (CODIGO PENAL REFORMADO, TOMO 5, 560) Groizard is of the view that bigamy may be committed by culpa. (id. at 558).

[25] DERECHO PENAL REFORMADO, VOL. 1, 629-630.

[26] Supra, at note 16.

[27] Supra, at note 15.

[28] ALBERT, THE REVISED PENAL CODE, 819 (1932 ed.).

[29] Id.

[30] L.B. REYES, THE REVISED PENAL CODE, BOOK ONE, 37 (13[th] ed. 1993).

[31] United States v. Peñalosa, 1 Phil. 109.

[32] WHARTON, CRIMINAL LAW, VOLUME 1, 302.

[33] People v. Vogel, 46 Cal.2d. 798; 299 P.2d 850 (1956).

[34] WHARTON, CRIMINAL LAW, VOL. 1, 203.

[35] Manahan, Jr. v. Court of Appeals, G.R. No. 111656, March 20, 1996, 255 SCRA 202.

[36] Marbella-Bobis v. Bobis, G.R. No. 138509, July 31, 2000, 336 SCRA 747.

[37] People v. Bitdu, *supra*, at note 10.

[38] Geisselman v. Geisselman, 134 Md. 453, 107 A. 185 (1919).

[39] WHARTON CRIMINAL LAW, VOL. 2, 2377 (12th ed., 1932).

[40] *Id.*

[41] *Id.*

[42] TOLENTINO, THE NEW CIVIL CODE, VOL. I, 690.

[43] Emphasis supplied.

[44] The Family Code (Executive Order No. 209) took effect on August 4, 1988.

[45] Navarro v. Domagtoy, A.M. No. MTJ-96-1088, July 19, 1996, 259 SCRA 129.

[46] G.R. No. 136467, April 6, 2000, 330 SCRA 201.

[47] 64 Phil. 179 (1937).

[48] *Id.* at 83.

[49] 81 Phil. 461 (1948).

[50] *Id.* at 463.

[51] 98 Phil. 574 (1956).

[52] 107 Phil. 381 (1960).

[53] AQUINO, REVISED PENAL CODE, VOL. III, 490.

[54] *Id.* at 497.

[55] PADILLA, COMMENTS ON THE REVISED PENAL CODE, VOL. IV, 717-718.

[56] THE REVISED PENAL CODE, 1981 ED., VOL. II, 906.

[57] Republic v. Nolasco, *supra*, at note 19.

[58] HANDBOOK ON THE FAMILY CODE, 48-49.

[59] THE FAMILY CODE OF THE PHILIPPINES ANNOTATED, 62-63 (1992 ed.).

[60] REGALADO, CRIMINAL LAW CONSPECTUS, 633 (1st ed., 2000), citing Lukban v. Republic, *supra*.

[61] *Id.* citing People v. Reyes, CA-G.R. No. 12107-R, June 30, 1955, and People v. Malana, CA-G.R. No. 5347, January 30, 1940.

[62] Sempio-Diy, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES, 358.

[63] CA-G.R. No. 22573-R, April 23, 1959.

[64] Article 2217, Civil Code.

[65] Francisco v. Ferrer, Jr., G.R. No. 142029, February 28, 2001, 353 SCRA 261.

[66] Id. at 266.

[67] TOLENTINO, NEW CIVIL CODE, VOL. II, 658, citing People v. Plaza, 52 O.G. 6609.

[68] Id.

[69] Albenson Enterprises Corp. v. Court of Appeals, G.R. No. 88694, January 11, 1993, 217 SCRA 16.

[70] Globe Mackay Cable and Radio Corporation v. Court of Appeals, G.R. No. 81262, August 25, 1989, 176 SCRA 778.

[71] Id.

[72] Leventhal v. Liberman, 186 N.E. 675 (1933).

[73] 135 A.2d 657 (1957).

[74] Id. at 662.

[75] Id. at 611-612.

[76] 164 N.E. 609 (1929).

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