# JOSELITO R. PIMENTEL, PETITIONER, VS. MARIA CHRYSANTINE L. PIMENTEL AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

*G.R. No. 172060. September 13, 2010*

Ponente: CARPIO, J.

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**CARPIO, J.:**

The Case

Before the Court is a petition for review[1] assailing the Decision[2] of the Court of Appeals, promulgated on 20 March 2006, in CA-G.R. SP No. 91867.

The Antecedent Facts

The facts are stated in the Court of Appeals' decision:

On 25 October 2004, Maria Chrysantine Pimentel y Lacap (private respondent) filed an action for frustrated parricide against Joselito R. Pimentel (petitioner), docketed as Criminal Case No. Q-04-130415, before the Regional Trial Court of Quezon City, which was raffled to Branch 223 (RTC Quezon City).

On 7 February 2005, petitioner received summons to appear before the Regional Trial Court of Antipolo City, Branch 72 (RTC Antipolo) for the pre-trial and trial of Civil Case No. 04-7392 (Maria Chrysantine Lorenza L. Pimentel v. Joselito Pimentel) for Declaration of Nullity of Marriage under Section 36 of the Family Code on the ground of psychological incapacity.

On 11 February 2005, petitioner filed an urgent motion to suspend the proceedings before the RTC Quezon City on the ground of the existence of a prejudicial question. Petitioner asserted that since the relationship between the offender and the victim is a key element in parricide, the outcome of Civil Case No. 04-7392 would have a bearing in the criminal case filed against him before the RTC Quezon City.

The Decision of the Trial Court

The RTC Quezon City issued an Order dated 13 May 2005[3] holding that the pendency of the case before the RTC Antipolo is not a prejudicial question that warrants the suspension of the criminal case before it. The RTC Quezon City held that the issues in Criminal Case No. Q-04-130415 are the injuries sustained by respondent and whether the case could be tried even if the validity of petitioner's marriage with respondent is in question. The RTC Quezon City ruled:

> WHEREFORE, on the basis of the foregoing, the Motion to Suspend Proceedings On the [Ground] of the Existence of a Prejudicial Question is, for lack of merit, DENIED.
>
> SO ORDERED.[4]

Petitioner filed a motion for reconsideration. In its 22 August 2005 Order,[5] the RTC Quezon City denied the

motion.

Petitioner filed a petition for certiorari with application for a writ of preliminary injunction and/or temporary restraining order before the Court of Appeals, assailing the 13 May 2005 and 22 August 2005 Orders of the RTC Quezon City.

The Decision of the Court of Appeals

In its 20 March 2006 Decision, the Court of Appeals dismissed the petition. The Court of Appeals ruled that in the criminal case for frustrated parricide, the issue is whether the offender commenced the commission of the crime of parricide directly by overt acts and did not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance. On the other hand, the issue in the civil action for annulment of marriage is whether petitioner is psychologically incapacitated to comply with the essential marital obligations. The Court of Appeals ruled that even if the marriage between petitioner and respondent would be declared void, it would be immaterial to the criminal case because prior to the declaration of nullity, the alleged acts constituting the crime of frustrated parricide had already been committed. The Court of Appeals ruled that all that is required for the charge of frustrated parricide is that at the time of the commission of the crime, the marriage is still subsisting.

Petitioner filed a petition for review before this Court assailing the Court of Appeals' decision.

The Issue

The only issue in this case is whether the resolution of the action for annulment of marriage is a prejudicial question that warrants the suspension of the criminal case for frustrated parricide against petitioner.

The Ruling of this Court

The petition has no merit.

Civil Case Must be Instituted
Before the Criminal Case

Section 7, Rule 111 of the 2000 Rules on Criminal Procedure[6] provides:

> Section 7. Elements of Prejudicial Question. - The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action and (b) the resolution of such issue determines whether or not the criminal action may proceed.

The rule is clear that the civil action must be instituted first before the filing of the criminal action. In this case, the Information[7] for Frustrated Parricide was dated 30 August 2004. It was raffled to RTC Quezon City on 25 October 2004 as per the stamped date of receipt on the Information. The RTC Quezon City set Criminal Case No. Q-04-130415 for pre-trial and trial on 14 February 2005. Petitioner was served summons in Civil Case No. 04-7392 on 7 February 2005.[8] Respondent's petition[9] in Civil Case No. 04-7392 was dated 4 November 2004 and was filed on 5 November 2004. Clearly, the civil case for annulment was filed after the filing of the criminal case for frustrated parricide. As such, the requirement of Section 7, Rule 111 of the 2000 Rules on Criminal Procedure was not met since the civil action was filed subsequent to the filing of the criminal action.

Annulment of Marriage is not a Prejudicial Question
in Criminal Case for Parricide


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Further, the resolution of the civil action is not a prejudicial question that would warrant the suspension of the criminal action.

There is a prejudicial question when a civil action and a criminal action are both pending, and there exists in the civil action an issue which must be preemptively resolved before the criminal action may proceed because howsoever the issue raised in the civil action is resolved would be determinative of the guilt or innocence of the accused in the criminal case.[10] A prejudicial question is defined as:

> x x x one that 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. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.[11]

The relationship between the offender and the victim is a key element in the crime of parricide,[12] which punishes any person "who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse."[13] The relationship between the offender and the victim distinguishes the crime of parricide from murder[14] or homicide.[15] However, the issue in the annulment of marriage is not similar or intimately related to the issue in the criminal case for parricide. Further, the relationship between the offender and the victim is not determinative of the guilt or innocence of the accused.

The issue in the civil case for annulment of marriage under Article 36 of the Family Code is whether petitioner is psychologically incapacitated to comply with the essential marital obligations. The issue in parricide is whether the accused killed the victim. In this case, since petitioner was charged with frustrated parricide, the issue is whether he performed all the acts of execution which would have killed respondent as a consequence but which, nevertheless, did not produce it by reason of causes independent of petitioner's will.[16] At the time of the commission of the alleged crime, petitioner and respondent were married. The subsequent dissolution of their marriage, in case the petition in Civil Case No. 04-7392 is granted, will have no effect on the alleged crime that was committed at the time of the subsistence of the marriage. In short, even if the marriage between petitioner and respondent is annulled, petitioner could still be held criminally liable since at the time of the commission of the alleged crime, he was still married to respondent.

We cannot accept petitioner's reliance on Tenebro v. Court of Appeals[17] that "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 x x x." First, the issue in Tenebro is the effect of the judicial declaration of nullity of a second or subsequent marriage on the ground of psychological incapacity on a criminal liability for bigamy. There was no issue of prejudicial question in that case. Second, the Court ruled in Tenebro that "[t]here is x x x a recognition written into the law itself that such a marriage, although void ab initio, may still produce legal consequences."[18] In fact, the Court declared in that case 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."[19]

In view of the foregoing, the Court upholds the decision of the Court of Appeals. The trial in Criminal Case No. Q-04-130415 may proceed as the resolution of the issue in Civil Case No. 04-7392 is not determinative of the guilt or innocence of petitioner in the criminal case.

WHEREFORE, we DENY the petition. We AFFIRM the 20 March 2006 Decision of the Court of Appeals in CA-G.R. SP No. 91867.


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**SO ORDERED.**

Peralta, Bersamin,[*] Abad, and Villarama, Jr.,[**] JJ., concur.

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[*] Designated additional member per Special Order No. 886 dated 1 September 2010.

[**] Designated additional member per Raffle dated 8 September 2010.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 27-34. Penned by Associate Justice Regalado E. Maambong with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle, concurring.

[3] Id. at 50-51. Penned by Presiding Judge Ramon A. Cruz.

[4] Id. at 51.

[5] Id. at 53.

[6] Dated 1 December 2000.

[7] Rollo, p. 54.

[8] Id. at 56.

[9] Id. at 61-65.

[10] Jose v. Suarez, G.R. No. 176795, 30 June 2008, 556 SCRA 773.

[11] Go v. Sandiganbayan, G.R. Nos. 150329-30, 11 September 2007, 532 SCRA 574, 577-578.

[12] People v. Dalag, 450 Phil. 304 (2003).

[13] Article 246 of the Revised Penal Code.

[14] Article 248 of the Revised Penal Code.

[15] Article 249 of the Revised Penal Code.

[16] See Article 6 of the Revised Penal Code.

[17] 467 Phil. 723 (2004).

[18] Id. at 744. Italicization in the original.

[19] Id. at 742.


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