

MYRNA P. ANTONE, PETITIONER, VS. LEO R. BERONILLA, RESPONDENT.

G.R. No. 183824. December 08, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to nullify and set aside the issuances of the Court of Appeals in CA-G.R. SP No. 102834, to wit: (a) the Resolution[1] dated 29 April 2008 dismissing the petition for certiorari under Rule 65, which assailed the trial court's Orders[2] dated 20 September 2007 and 6 December 2007 in Criminal Case No. 07-0907-CFM for Bigamy; and (b) the Resolution[3] dated 18 July 2008 denying the motion for reconsideration of the first resolution.

The trial court quashed the Information on the ground that the elements of Bigamy were rendered incomplete after herein respondent presented documents to prove a fact, which the court believed would negate the allegation in the Information that there was a first valid marriage. The evidence presented showed that respondent later obtained a judicial declaration of nullity of the first union following the celebration of a subsequent marriage.

The Antecedents

On 12 March 2007, herein petitioner Myrna P. Antone executed an Affidavit-Complaint[4] for Bigamy against Leo R. Beronilla before the Office of the City Prosecutor of Pasay City. She alleged that her marriage with respondent in 1978 had not yet been legally dissolved when the latter contracted a second marriage with one Cecile Maguillo in 1991.

On 21 June 2007, the prosecution filed the corresponding Information[5] before the Regional Trial Court, Pasay City. The case was docketed as Criminal Case No. 07-0907-CFM and raffled to Branch 115.

Pending the setting of the case for arraignment, herein respondent moved to quash the Information on the ground that the facts charged do not constitute an offense.[6] He informed the court that his marriage with petitioner was declared null and void by the Regional Trial Court, Branch 16, Naval, Biliran on 26 April 2007;[7] that the decision became final and executory on 15 May 2007;[8] and that such decree has already been registered with the Municipal Civil Registrar on 12 June 2007.[9] He argued that since the marriage had been declared null and void from the beginning, there was actually no first marriage to speak of. Absent a first valid marriage, the facts alleged in the Information do not constitute the crime of bigamy.[10]

In its comment/opposition to the motion,[11] the prosecution, through herein petitioner, maintained that the respondent committed an act which has all the essential requisites of bigamy. The prosecution pointed out that the marriage of petitioner and respondent on 18 November 1978 has not yet been severed when he contracted a second marriage on 16 February 1991, for which reason, bigamy has already been committed before the court declared the first marriage null and void on 27 April 2007.[12] The prosecution also invoked the rulings of the Supreme Court holding that a motion to quash is a hypothetical admission of the facts alleged in the information,

and that facts contrary thereto are matters of defense which may be raised only during the presentation of evidence.[13]

After a hearing on the motion,[14] the court quashed the Information.[15] Applying *Morigo v. People*,^[16] it ruled:

Hence, contrary to what was stated in the Information, accused Beronilla was actually never legally married to Myrna Antone. On this score alone, the first element appears to be missing. Furthermore, the statement in the definition of Bigamy which reads "before the first marriage has been legally dissolved" clearly contemplates that the first marriage must at least be annulable or voidable but definitely not void, as in this case. xxx [I]n a similar case, [the Supreme Court] had the occasion to state:

The first element of bigamy as a crime requires that the accused must have been legally married. But in this case, legally speaking, the petitioner was never married to Lucia Barrete. Thus, there is no first marriage to speak of. Under the principle of retroactivity of a marriage being declared void ab initio, the two were never married "from the beginning." xxx The existence and the validity of the first marriage being an essential element of the crime of bigamy, it is but logical that a conviction for said offense cannot be sustained where there is no first marriage to speak of. xxx^[17]

The prosecution, through herein petitioner, moved for reconsideration of the said Order^[18] on the ground, among others, that the facts and the attending circumstances in *Morigo* are not on all fours with the case at bar. It likewise pointed out that, in *Mercado v. Tan*,^[19] this Court has already settled that "(a) declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense."^[20]

In its Order of 6 December 2007,^[21] the court denied the motion for reconsideration stating that *Mercado* has already been superseded by *Morigo*.

In the interim, in a Petition for Relief from Judgment^[22] before the Regional Trial Court of Naval, Biliran, petitioner questioned the validity of the proceedings in the petition for the declaration of nullity of marriage in Civil Case No. B-1290 on 5 October 2007. On 24 March 2008, the court set aside its Decision of 26 April 2007 declaring the marriage of petitioner with respondent null and void, and required herein petitioner (respondent in Civil Case No. B-1290) to file her "answer to the complaint."^[23] On 21 July 2008, the court DISMISSED the petition for nullity of marriage for failure of herein respondent (plaintiff in Civil Case No. B-1290) to submit his pre-trial brief.^[24] Respondent, however, challenged the orders issued by the court before the Court of Appeals.^[25] The matter is still pending resolution thereat.^[26]

Meanwhile, in a petition for certiorari under Rule 65 of the Rules of Court filed on 26 March 2008 before the Court of Appeals,^[27] herein petitioner alleged that the Pasay City trial court acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the case of bigamy and denied her motion for reconsideration.

In its Resolution of 29 April 2008, the Court of Appeals dismissed the petition stating that:

The present petition xxx is fatally infirm in form and substance for the following reasons:

1. The verification is defective as it does not include the assurance that the allegations in the petition are based on authentic records.
2. Since the petition assails the trial court's dismissal of the criminal information for bigamy filed against private respondent Leo Beronilla, the petition, if at all warranted, should be filed in behalf of the People of the Philippines by the Office of the Solicitor General, being its statutory counsel in all appealed criminal cases.
3. There is a violation of the rule on double jeopardy as the dismissal of the subject criminal case is tantamount

to an acquittal based on the trial court's finding that the first essential element of bigamy, which is a first valid marriage contracted by private respondent is wanting. There is no clear showing in the petition that the dismissal was tainted with arbitrariness which violated petitioner's right to due process. Notably, petitioner filed her comment/opposition to private respondent's motion to quash before the trial court issued its Order dated September 20, 2007 dismissing the information. Hence, if there is no denial of due process, there can be no grave abuse of discretion that would merit the application of the exception to the double jeopardy rule. [28]

On 18 July 2008, the Court of Appeals denied respondent's Motion for Reconsideration of the aforementioned Resolution for lack of merit. [29]

Hence, this petition.[30]

Our Ruling

I

We are convinced that this petition should be given due course despite the defect in the pleading and the question of legal standing to bring the action.

The Rules of Court provides that a pleading required to be verified which lacks a proper verification shall be treated as unsigned pleading.[31]

This, notwithstanding, we have, in a number of cases, opted to relax the rule in order that the ends of justice may be served.[32] The defect being merely formal and not jurisdictional, we ruled that the court may nevertheless order the correction of the pleading, or even act on the pleading "if the attending circumstances are such that xxx strict compliance with the rule may be dispensed with in order that the ends of justice xxx may be served." [33] At any rate, a pleading is required to be verified only to ensure that it was prepared in good faith, and that the allegations were true and correct and not based on mere speculations.[34]

There is likewise no dispute that it is the Office of the Solicitor General (OSG) which has the authority to represent the government in a judicial proceeding before the Court of Appeals. The Administrative Code specifically defined its powers and functions to read, among others:

Sec. 35. Powers and Functions. - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. xxx It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.[35]

As an exception to this rule, the Solicitor General is allowed to:

(8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.[36]

Thus, in *Republic v. Partisala*, [37] we held that the summary dismissal of an action in the name of the Republic of the Philippines, when not initiated by the Solicitor General, is in order.[38] Not even the appearance of the conformity of the public prosecutor in a petition for certiorari would suffice because the authority of the City Prosecutor or his assistant to represent the People of the Philippines is limited to the proceedings in the trial

court.[39]

We took exceptions, however, and gave due course to a number of actions even when the respective interests of the government were not properly represented by the Office of the Solicitor General.

In *Labaro v. Panay*,[40] this Court dealt with a similar defect in the following manner:

It must, however, be stressed that if the public prosecution is aggrieved by any order or ruling of the trial judge in a criminal case, the OSG, and not the prosecutor, must be the one to question the order or ruling before us.[41] xxx

Nevertheless, since the challenged order affects the interest of the State or the plaintiff People of the Philippines, we opted not to dismiss the petition on this technical ground. Instead, we required the OSG to comment on the petition, as we had done before in some cases.[42] In light of its Comment, we rule that the OSG has ratified and adopted as its own the instant petition for the People of the Philippines. (Emphasis supplied.)

In *Cooperative Development Authority v. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc.*,[43] without requiring the Office of the Solicitor General to file a comment on the petition, this Court determined the merits of the case involving a novel issue on the nature and scope of jurisdiction of the Cooperative Development Authority to settle cooperative disputes as well as the battle between two (2) factions concerning the management of the Dolefil Agrarian Reform Beneficiaries Cooperative, Inc. (DARBCI) "that inevitably threatens the very existence of one of the country's major cooperatives." [44]

And, lest we defeat the ends of justice, we opt to look into the merit of the instant petition even absent the imprimatur of the Solicitor General. After all, "for justice to prevail, the scales must balance, for justice is not to be dispensed for the accused alone." [45] To borrow the words of then Justice Minita V. Chico-Nazario in another case where the dismissal of a criminal case pending with the trial court was sought:

[T]he task of the pillars of the criminal justice system is to preserve our democratic society under the rule of law, ensuring that all those who [come or are brought to court] are afforded a fair opportunity to present their side[s]. xxx The State, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case.[46]

II

We cannot agree with the Court of Appeals that the filing of this petition is in violation of the respondent's right against double jeopardy on the theory that he has already been practically acquitted when the trial court quashed the Information.

Well settled is the rule that for jeopardy to attach, the following requisites must concur:

(1) there is a complaint or information or other formal charge sufficient in form and substance to sustain a conviction; (2) the same is filed before a court of competent jurisdiction; (3) there is a valid arraignment or plea to the charges; and (4) the accused is convicted or acquitted or the case is otherwise dismissed or terminated without his express consent.[47]

The third and fourth requisites are clearly wanting in the instant case as (a) respondent has not yet entered his plea to the charge when he filed the Motion to Quash the Information, and (2) the case was dismissed not merely with his consent but, in fact, at his instance.[48]

We reiterate, time and again, that jeopardy does not attach in favor of the accused on account of an order sustaining a motion to quash.[49] More specifically, the granting of a motion to quash anchored on the ground

that the facts charged do not constitute an offense is "not a bar to another prosecution for the same offense." [50] Thus:

It will be noted that the order sustaining the motion to quash the complaint against petitioner was based on Subsection (a) of Section 2 of Rule 117 of the Rules of Court - that the facts charged in the complaint do not constitute an offense. If this is so then the dismissal of said complaint will not be a bar to another prosecution for the same offense, for it is provided in Section 8 of Rule 117 of the Rules of Court [now Section 6 of the 2000 Rules of Criminal Procedure] that an order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Section 2, Subsection[s] (f) and (h) of this rule [now substantially reproduced in Section 3, Subsections (g) and (i) of the 2000 Rules of Criminal Procedure] xxx. [51]

III

We now determine the merit of the petition Æ— did the trial court act without or in excess of jurisdiction or grave abuse of discretion when it sustained respondent's motion to quash on the basis of a fact contrary to those alleged in the information?

Petitioner maintains that the trial court did so because the motion was a hypothetical admission of the facts alleged in the information and any evidence contrary thereto can only be presented as a matter of defense during trial.

Consistent with existing jurisprudence, we agree with the petitioner.

We define a motion to quash an Information as Æ—

the mode by which an accused assails the validity of a criminal complaint or Information filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the Information. [52]

This motion is "a hypothetical admission of the facts alleged in the Information," [53] for which reason, the court cannot consider allegations contrary to those appearing on the face of the information. [54]

As further elucidated in Cruz, Jr. v. Court of Appeals: [55]

It is axiomatic that a complaint or information must state every single fact necessary to constitute the offense charged; otherwise, a motion to dismiss/quash on the ground that it charges no offense may be properly sustained. The fundamental test in considering a motion to quash on this ground is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined in the law.

Contrary to the petitioner's contention, a reading of the information will disclose that the essential elements of the offense charged are sufficiently alleged. It is not proper therefore to resolve the charges at the very outset, in a preliminary hearing only and without the benefit of a full-blown trial. The issues require a fuller examination. Given the circumstances of this case, we feel it would be unfair to shut off the prosecution at this stage of the proceedings and to dismiss the informations on the basis only of the petitioner's evidence, such as [this]. [56]

As in the recent case of Los Baños v. Pedro, [57] where we found no merit in respondent's allegation that the facts charged do not constitute an offense because "the Information duly charged a specific offense and provide[d] the details on how the offense was committed," [58] we see no apparent defect in the allegations in the Information in the case at bar. Clearly, the facts alleged in its accusatory portion, which reads:

That on or about the 16[th] day of February, 1991, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, LEO R. BERONILLA, having been united in a

lawful marriage with one MYRNA A. BERONILLA, which marriage is still in force and subsisting and without having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second marriage with one Cecile Maguillo, which subsequent marriage of the accused has all the essential requisites for validity.[59]

sufficiently constitute an offense. It contained all the elements of the crime of Bigamy under Article 349 of the Revised Penal Code hereunder enumerated:

- (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.[60]

The documents showing that: (1) the court has decreed that the marriage of petitioner and respondent is null and void from the beginning; and (2) such judgment has already become final and executory and duly registered with the Municipal Civil Registrar of Naval, Biliran are pieces of evidence that seek to establish a fact contrary to that alleged in the Information — that a first valid marriage was subsisting at the time the respondent contracted a subsequent marriage. This should not have been considered at all because matters of defense cannot be raised in a motion to quash.

Neither do we find a justifiable reason for sustaining the motion to quash even after taking into consideration the established exceptions to the rule earlier recognized by this Court, among others: (1) when the new allegations are admitted by the prosecution;[61] (2) when the Rules so permit, such as upon the grounds of extinction of criminal liability and double jeopardy;[62] and (3) when facts have been established by evidence presented by both parties which destroyed the prima facie truth of the allegations in the information during the hearing on a motion to quash based on the ground that the facts charged do not constitute an offense, and "it would be pure technicality for the court to close its eyes to said facts and still give due course to the prosecution of the case already shown to be weak even to support possible conviction xxx." [63]

For of what significance would the document showing the belated dissolution of the first marriage offer? Would it serve to prevent the impracticability of proceeding with the trial in accordance with *People v. dela Rosa* thereby warranting the non-observance of the settled rule that a motion to quash is a hypothetical admission of the facts alleged in the information? We quote:

[W]here in the hearing on a motion to quash predicated on the ground that the allegations of the information do not charge an offense, facts have been brought out by evidence presented by both parties which destroy the prima facie truth accorded to the allegations of the information on the hypothetical admission thereof, as is implicit in the nature of the ground of the motion to quash, it would be pure technicality for the court to close its eyes to said facts and still give due course to the prosecution of the case already shown to be weak even to support possible conviction, and hold the accused to what would clearly appear to be a merely vexatious and expensive trial, on her part, and a wasteful expense of precious time on the part of the court, as well as of the prosecution.[64] (Emphasis supplied.)

We find that there is none.

With the submission of the documents showing that the court has declared the first marriage void ab initio, respondent heavily relied on the rulings[65] in *People v. Mendoza and Morigo* declaring that: (a) a case for bigamy based on a void ab initio marriage will not prosper because there is no need for a judicial decree to establish that a void ab initio marriage is invalid;[66] and (b) a marriage declared void ab initio has retroactive legal effect such that there would be no first valid marriage to speak of after all, which renders the elements of

bigamy incomplete.[67]

Both principles, however, run contrary to the new provision of the Family Code, which was promulgated by the late President Corazon C. Aquino in 1987, a few years before respondent's subsequent marriage was celebrated in 1991.

The specific provision, which reads:

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

was exhaustively discussed in Mercado,[68] where this Court settled the "conflicting" jurisprudence on "the need for a judicial declaration of nullity of the previous marriage." After establishing that Article 40 is a new provision expressly requiring a judicial declaration of nullity of a prior marriage and examining a long line of cases,[69] this Court, concluded, in essence, that under the Family Code a subsequent judicial declaration of the nullity of the first marriage is immaterial in a bigamy case because, by then, the crime had already been consummated. Otherwise stated, this Court declared that a person, who contracts a subsequent marriage absent a prior judicial declaration of nullity of a previous one, is guilty of bigamy.[70]

Notably, Morigo, was indeed promulgated years after Mercado. Nevertheless, we cannot uphold the Order dated 6 December 2007 of the trial court, which maintained that Morigo has already superseded Mercado. In fact, in Morigo, this Court clearly distinguished the two (2) cases from one another, and explained:

The present case is analogous to, but must be distinguished from Mercado v. Tan. In the latter case, the judicial declaration of nullity of the first marriage was likewise obtained after the second marriage was already celebrated. xxx

It bears stressing though that in Mercado, the first marriage was actually solemnized xxx. Ostensibly, at least, the first marriage appeared to have transpired, although later declared void ab initio.

In the instant case, however, no marriage ceremony at all was performed by a duly authorized solemnizing officer. Petitioner and Lucia Barrete merely signed a marriage contract on their own. The mere private act of signing a marriage contract bears no semblance to a valid marriage and thus, needs no judicial declaration of nullity. Such act alone, without more, cannot be deemed to constitute an ostensibly valid marriage for which petitioner might be held liable for bigamy unless he first secures a judicial declaration of nullity before he contracts a subsequent marriage.[71]

The application of Mercado to the cases following Morigo even reinforces the position of this Court to give full meaning to Article 40 of the Family Code. Thus, in 2004, this Court ruled in Tenebro v. Court of Appeals:[72]

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, xxx 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. 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. xxx.[73] (Emphasis supplied.)

Finally, in Re: Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico,[74] this Court pronounced:

In a catena of cases,[75] the Court has consistently held that a judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage, reprehensible

and immoral. xxx

To conclude, the issue on the declaration of nullity of the marriage between petitioner and respondent only after the latter contracted the subsequent marriage is, therefore, immaterial for the purpose of establishing that the facts alleged in the information for Bigamy does not constitute an offense. Following the same rationale, neither may such defense be interposed by the respondent in his motion to quash by way of exception to the established rule that facts contrary to the allegations in the information are matters of defense which may be raised only during the presentation of evidence.

All considered, we find that the trial court committed grave abuse of discretion when, in so quashing the Information in Criminal Case No. 07-0907-CFM, it considered an evidence introduced to prove a fact not alleged thereat disregarding the settled rules that a motion to quash is a hypothetical admission of the facts stated in the information; and that facts not alleged thereat may be appreciated only under exceptional circumstances, none of which is obtaining in the instant petition.

WHEREFORE, the Orders dated 20 September 2007 and 6 December 2007 of the Regional Trial Court, Branch 115, Pasay City as well as the Resolutions dated 29 April 2008 and 18 July 2008 of the Court of Appeals are hereby SET ASIDE. Criminal Case No. 07-0907-CFM is REMANDED to the trial court for further proceedings.

SO ORDERED.

Corona,C.J., (Chairperson), Leonardo-De Castro,[*] Del Castillo, and Abad,[**] JJ., concur.

[*] Per Special Order No. 916 dated 24 November 2010, Associate Justice Teresita J. Leonardo-De Castro is designated as Acting Working Chairperson.

[**] Per Special Order No. 917 dated 24 November 2010, Associate Justice Roberto A. Abad is designated as Additional Member.

[1] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Apolinario D. Bruselas, Jr., concurring. Rollo, pp. 29-31.

[2] Both issued by Judge Francisco G. Mendiola. Records, pp. 50-52 and 63.

[3] Rollo, pp. 32-33.

[4] Records, pp. 11-14.

[5] Id. at 1-2.

[6] Id. at 31-36.

[7] Id. at 32.

[8] Id. at 32-33.

[9] Id. at 34.

[10] CA rollo, p. 34.

[11] Id. at 33-41.

[12] Id. at 37-38.

- [13] Id. at 35.
- [14] Records, p. 48.
- [15] Id. at 52.
- [16] G.R. No. 145226, 6 February 2004, 422 SCRA 376.
- [17] Records, pp. 51-52 citing *Morigo v. People*, id.
- [18] Records, pp. 55-61.
- [19] G.R. No. 137110, 1 August 2000, 337 SCRA 122.
- [20] Records, p. 59 citing *Mercado v. Tan*, id.
- [21] Records, p. 63.
- [22] Rollo, p. 21.
- [23] Id. at 64.
- [24] Id. at 109.
- [25] Id. at 126.
- [26] Id. at 123-126.
- [27] CA rollo, pp. 2-52.
- [28] Id. at 55-56.
- [29] Id. at 116.
- [30] Rollo, pp. 9-64.
- [31] Sec. 4, Rule 7, Rules of Court, as amended by A.M. No. 00-2-10 dated 1 May 2000.
- [32] Hon. Eduardo Nonato Joson, in his capacity as the Governor of the Province of Nueva Ecija v. Executive Secretary Ruben D. Torres, et al., G.R. No. 131255, 20 May 1998 citing, among others, *Oshita v. Republic*, L-21180, 31 March 1967, 19 SCRA 700,703.
- [33] Id.
- [34] Id.; *Robern Development Corporation v. Judge Jesus V. Quitain*, G. R. No. 135042, 23 September 1999, 373 SCRA 773, 786.
- [35] Sec. 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987.
- [36] Sec. 35(8), Chapter 12, Title III, Book IV of the Administrative Code of 1987.
- [37] No. L-61997, 15 November 1982, 370 SCRA 370.
- [38] Id. at 373.
- [39] *Galangco v. Fung*, G.R. No. 157952, 8 September 2009, 598 SCRA 637, 643.
- [40] G.R. No. 129567, 4 December 1998, 299 SCRA 714.
- [41] Id. at 720 citing *Tan v. Gallardo*, 73 SCRA 306, 313 [1976].

[42] Id. at 721 citing the following cases: *People v. Montesa, Jr.*, 248 SCRA 641, 644-645 [1993], further citing *Republic v. Partisala*, 118 SCRA 370 [1982]; *City Fiscal of Tacloban v. Espina*, 166 SCRA 614 [1988]; *People v. Dacudao*, 170 SCRA 489 [1989]; *People v. Calo*, 186 SCRA 620 [1990]; and *People v. Nano*, 205 SCRA 155 [1992].

[43] G.R. No. 137489, 29 May 2002, 382 SCRA 552.

[44] Id. at 568.

[45] *Tan v. People*, G.R. No. 173637, 21 April 2009, 586 SCRA 139, 162 citing the following cases: *Dimatulac v. Villon*, 358 Phil. 328, 366; 297 SCRA 679, 714 (1998); *People v. Subida*, G.R. No. 145945, 27 June 2006, 493 SCRA 125, 137.

[46] *Tan v. People*, id. at 162-163.

[47] *Javier v. Sandiganbayan, First Division*, G.R. Nos. 147026-27, 11 September 2009, 599 SCRA 324, 343-344 citing *Cabo v. Sandiganbayan*, G.R. No. 169509, 16 June 2006, 491 SCRA 264.

[48] *Milo v. Salanga*, No. L-37007, 20 July 1987, 152 SCRA 113, 122.

[49] Id. at 121-122 citing the following: Section 8, Rule 117, Rules of Court; now Section 7, Rule 117, 1985 Rules on Criminal Procedure; *Andres v. Cacdac, Jr.*, 113 SCRA 216.

[50] *People v. Consulta*, No. L-41251, 31 March 1976, 70 SCRA 277, 280-281.

[51] Id. quoting Secs. 2(f) and 2(h), now substantially reproduced in Secs. 3(g) and 3(i) of the 2000 Rules on Criminal Procedure, to wit: (g) That the criminal action or liability has been extinguished; and (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

[52] *Javier v. Sandiganbayan, First Division*, supra note 47 citing *Ariel Los Baños, et al. v. Joel Pedro*, G.R. No. 173588, 22 April 2009, 586 SCRA 303.

[53] *Milo v. Salanga*, supra note 48 at 121 citing *People v. Lim Hoa*, 103 Phil. 1169 and *Regalado, Remedial Law Compen[dium]*, 1085 ed., Vol. 2, p. 684.

[54] *Milo v. Salanga*, supra note 48 at 121.

[55] G.R. No. 83754, 18 February 1991, 194 SCRA 145.

[56] Id. at 150 citing *U.S. v. Pompeya*, 31 Phil. 245 and *People v. de la Rosa*, No. L-34112, 25 June 1980, 98 SCRA 190.

[57] G.R. No. 173588, 22 April 2009, 586 SCRA 303.

[58] Id. at 321.

[59] Records, p. 1.

[60] *Tenebro v. Court of Appeals*, G.R. No. 150758, 18 February 2004, 423 SCRA 272, 279 citing *Reyes, L.B., THE REVISED PENAL CODE*, Book Two, 14[th] ed., 1998, p. 907.

[61] *People v. Navarro*, Nos. L-1 and L-2, 75 Phil. 516, 518-519 [1945].

[62] *Garcia v. Court of Appeals*, G.R. No. 119063, 27 January 1997, 266 SCRA 678, 691.

[63] *People v. de la Rosa*, supra note 56 at 199-200.

[64] *Id.*

[65] Rollo, p. 145 citing *Morigo v. People*, supra note 16 and *People v. Mendoza*, L-5877, 95 Phil. 845.

[66] Rollo, p. 145 citing *People v. Mendoza*, *id.*

[67] *Morigo v. People*, supra note 16 at 383-384.

[68] Supra note 19.

[69] Supra note 19 at 128-133 citing, among others, the following: *Wiegel v. Sempio-Diy*, 143 SCRA 499, 19 August 1986, per Paras, J.; *Domingo v. Court of Appeals*, 226 SCRA 572, 17 September 1993, per Romero, J., citing *Sempio-Diy*, *Handbook of the Family Code of the Philippines*, 1988, p. 46; and *Terre v. Terre*, 211 SCRA 6, 3 July 1992, per curiam.

[70] Supra note 19 at 124.

[71] Supra note 16 at 384.

[72] G.R. 150758, 18 February 2004, 423 SCRA 272.

[73] *Id.* at 284.

[74] A.M. No. 2008-20-SC, 15 March 2010.

[75] *Id.* citing *Morigo v. People*, G.R. No. 145226, February 6, 2004, 422 SCRA 376; *Domingo v. Court of Appeals*, G.R. No. 104818, September 17, 1993, 226 SCRA 572; *Terre v. Terre*, A.C. No. 2349, July 3, 1992, 211 SCRA 7; *Wiegel v. Sempio-Diy*, No. L-53703, August 19, 1986, 143 SCRA 499; *Vda. de Consuegra v. Government Service Insurance System*, No. L-28093, January 30, 1971, 37 SCRA 315; *Gomez v. Lipana*, No. L-23214, June 30, 1970, 33 SCRA 614.

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