

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EDGARDO V. ODTUHAN, RESPONDENT.*G.R. No. 191566. July 17, 2013*

Ponente: PERALTA, J.

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This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioner People of the Philippines, represented by the Office of the Solicitor General, against respondent Edgardo V. Odtuhan assailing the Court of Appeals Decision[1] dated December 17, 2009 and Resolution[2] dated March 4, 2010 in CA-G.R. SP No. 108616. The assailed decision granted the petition for certiorari filed by respondent, and ordered the Regional Trial Court (RTC) of Manila, Branch 27, to give due course to and receive evidence on respondent's motion to quash and resolve the case with dispatch, while the assailed resolution denied petitioner's motion for reconsideration.

The facts of the case follow:

On July 2, 1980, respondent married Jasmin Modina (Modina).[3] On October 28, 1993, respondent married Eleanor A. Alagon (Alagon).[4] Sometime in August 1994, he filed a petition for annulment of his marriage with Modina.[5] On February 23, 1999, the RTC of Pasig City, Branch 70 granted respondent's petition and declared his marriage with Modina void ab initio for lack of a valid marriage license.[6] On November 10, 2003, Alagon died. In the meantime, in June 2003, private complainant Evelyn Abesamis Alagon learned of respondent's previous marriage with Modina.[7] She thus filed a Complaint-Affidavit[8] charging respondent with Bigamy.

On April 15, 2005, respondent was indicted in an Information[9] for Bigamy committed as follows:

That on or about October 28, 1993, in the City of Manila, Philippines, the said accused being then legally married to JASMIN MODINA and without such marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second or subsequent marriage with ELEANOR A. ALAGON, which second/subsequent marriage has all the essential requisites for validity.

Contrary to law.[10]

On February 5, 2008, respondent filed an Omnibus Motion[11] praying that he be allowed to present evidence to support his motion; that his motion to quash be granted; and that the case be dismissed. Respondent moved for the quashal of the information on two grounds, to wit: (1) that the facts do not charge the offense of bigamy; and (2) that the criminal action or liability has been extinguished.[12]

On September 4, 2008, the RTC[13] issued an Order[14] denying respondent's Omnibus Motion. The RTC held that the facts alleged in the information – that there was a valid marriage between respondent and Modina and without such marriage having been dissolved, respondent contracted a second marriage with Alagon – constitute the crime of bigamy. The trial court further held that neither can the information be quashed on the ground that criminal liability has been extinguished, because the declaration of nullity of the first marriage is not one of the

modes of extinguishing criminal liability. Respondent's motion for reconsideration was likewise denied in an Order[15] dated February 20, 2009.

Aggrieved, respondent instituted a special civil action on certiorari under Rule 65 of the Rules of Court[16] before the CA, assailing the denial of his motion to quash the information despite the fact that his first marriage with Modina was declared null and void ab initio prior to the filing of the bigamy case.[17]

On December 17, 2009, the CA rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition for certiorari is hereby GRANTED. The RTC, Branch 27, Manila is hereby ordered to give due course to and receive evidence on the petitioner's motion to quash and resolve the case with dispatch.

SO ORDERED.[18]

The CA applied the conclusion made by the Court in *Morigo v. People*,[19] and held that there is cogent basis in looking into the motion to quash filed by respondent, for if the evidence would establish that his first marriage was indeed void ab initio, one essential element of the crime of bigamy would be lacking.[20] The appellate court further held that respondent is even better off than *Morigo* which thus calls for the application of such doctrine, considering that respondent contracted the second marriage after filing the petition for the declaration of nullity of his first marriage and he obtained the favorable declaration before the complaint for bigamy was filed against him.[21] The CA thus concluded that the RTC gravely abused its discretion in denying respondent's motion to quash the information, considering that the facts alleged in the information do not charge an offense.[22]

With the denial of the motion for reconsideration before the CA, petitioner filed a petition before the Court in this petition for review on certiorari under Rule 45 of the Rules of Court based on the following grounds:

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RENDERED ITS DECISION DATED DECEMBER 17, 2009 GRANTING RESPONDENT'S PETITION FOR CERTIORARI AND THE RESOLUTION DATED MARCH 4, 2010 DENYING PETITIONER'S MOTION FOR RECONSIDERATION, CONSIDERING THAT:

I.

THE INFORMATION CHARGING RESPONDENT OF BIGAMY SUFFICIENTLY ALLEGES ALL THE ELEMENTS CONSTITUTING SAID OFFENSE.

II.

THE SUBSEQUENT COURT JUDGMENT DECLARING RESPONDENT'S FIRST MARRIAGE VOID AB INITIO DID NOT EXTINGUISH RESPONDENT'S CRIMINAL LIABILITY WHICH ALREADY ATTACHED PRIOR TO SAID JUDGMENT.[23]

The petition is meritorious.

The issues are not novel and have been squarely ruled upon by this Court in *Montañez v. Cipriano*,[24] *Teves v. People*,[25] and *Antone v. Beronilla*. [26]

In *Montañez*, respondent Cipriano married Socrates in April 1976, but during the subsistence of their marriage on January 24, 1983, respondent married Silverio. In 2001, respondent filed a petition for the annulment of her marriage with Socrates on the ground of psychological incapacity which was granted on July 18, 2003. On May 14, 2004, petitioner filed a complaint for bigamy against respondent. The latter, however, moved for the quashal of the information and dismissal of the criminal complaint alleging that her first marriage had already been declared void ab initio prior to the filing of the bigamy case.

In Teves, petitioner married Thelma on November 26, 1992. During the subsistence of their marriage on December 10, 2001, he again married Edita. On May 4, 2006, petitioner obtained a declaration of her marriage with Thelma null and void on the ground that the latter is physically incapacitated to comply with her marital obligations. On June 8, 2006, an Information for Bigamy was filed against petitioner. The court eventually convicted petitioner of the crime charged.

In Antone, petitioner married respondent in 1978, but during the subsistence of their marriage, respondent contracted a second marriage in 1991. On April 26, 2007, respondent obtained a declaration of nullity of her first marriage which decision became final and executory on May 15, 2007. On June 21, 2007, the prosecution filed an information for bigamy against respondent which the latter sought to be quashed on the ground that the facts charged do not constitute an offense.

The present case stemmed from similar procedural and factual antecedents as in the above cases. As in Antone and Montañez, respondent moved to quash the information on the grounds that the facts do not charge the offense of bigamy and that his criminal liability has been extinguished both because of the declaration of nullity of the first marriage. The RTC refused to quash the information. On petition for certiorari, the CA, however, reached a different conclusion.

As defined in Antone, “a motion to quash information is 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.” It is a hypothetical admission of the facts alleged in the information. The fundamental test in determining the sufficiency of the material averments in an Information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence aliunde or matters extrinsic of the information are not to be considered.[27] To be sure, a motion to quash should be based on a defect in the information which is evident on its fact.[28] Thus, if the defect can be cured by amendment or if it is based on the ground that the facts charged do not constitute an offense, the prosecution is given by the court the opportunity to correct the defect by amendment.[29] If the motion to quash is sustained, the court may order that another complaint or information be filed[30] except when the information is quashed on the ground of extinction of criminal liability or double jeopardy.[31]

An examination of the information filed against respondent, however, shows the sufficiency of the allegations therein to constitute the crime of bigamy as it contained all the elements of the crime as provided for in Article 349[32] of the Revised Penal Code, to wit:

- (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.[33]

Here, the information contained the following allegations: (1) that respondent is legally married to Modina; (2) that without such marriage having been legally dissolved; (3) that respondent willfully, unlawfully, and feloniously contracted a second marriage with Alagon; and (4) that the second marriage has all the essential requisites for validity. Respondent’s evidence showing the court’s declaration that his marriage to Modina is null and void from the beginning because of the absence of a marriage license is only an evidence that seeks to establish a fact contrary to that alleged in the information that a first valid marriage was subsisting at the time he contracted the second marriage. This should not be considered at all, because matters of defense cannot be raised in a motion to quash.[34] It is not proper, therefore, to resolve the charges at the very outset without the benefit of

a full blown trial. The issues require a fuller examination and it would be unfair to shut off the prosecution at this stage of the proceedings and to quash the information on the basis of the document presented by respondent.[35] With the presentation of the court decree, no facts have been brought out which destroyed the prima facie truth accorded to the allegations of the information on the hypothetical admission thereof.

Respondent's motion to quash was founded on the trial court's declaration that his marriage with Modina is null and void ab initio. He claims that with such declaration, one of the elements of the crime is wanting. Thus, the allegations in the information do not charge the offense of bigamy, or at the very least, such court decree extinguished his criminal liability. Both respondent and the CA heavily relied on the Court's pronouncement in *Morigo v. People*[36] where the accused therein was acquitted because the elements of the crime of bigamy were incomplete. In said case, the first marriage was declared null and void, because the parties only signed the marriage contract without the presence of a solemnizing officer. Considering, therefore, that the declaration of nullity retroacts to the date of the first marriage, the Court held that there was no marriage to speak of when the accused contracted the second marriage. Logically, the accused was acquitted.

The Family Code has settled once and for all the conflicting jurisprudence on the matter. A declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense.[37] It has been held in a number of cases 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.[38]

What makes a person criminally liable for bigamy is when he contracts a second or subsequent marriage during the subsistence of a valid marriage.[39] Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration, the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy.[40] If we allow respondent's line of defense and the CA's ratiocination, a person who commits bigamy can simply evade prosecution by immediately filing a petition for the declaration of nullity of his earlier marriage and hope that a favorable decision is rendered therein before anyone institutes a complaint against him.[41]

Respondent, likewise, claims that there are more reasons to quash the information against him, because he obtained the declaration of nullity of marriage before the filing of the complaint for bigamy against him. Again, we cannot sustain such contention. In addition to the discussion above, settled is the rule that criminal culpability attaches to the offender upon the commission of the offense and from that instant, liability appends to him until extinguished as provided by law and that the time of filing of the criminal complaint or information is material only for determining prescription.[42]

Thus, as held in *Antone*:

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.[43]

In view of the foregoing, the CA erred in granting the petition for certiorari filed by respondent. The RTC did not commit grave abuse of discretion in denying his motion to quash and to allow him to present evidence to support his omnibus motion.

WHEREFORE, the petition is hereby GRANTED. The Court of Appeals Decision dated December 17, 2009 and Resolution dated March 4, 2010 in CA-G.R. SP No. 108616, are SET ASIDE. Criminal Case No. 05-235814 is REMANDED to the Regional Trial Court of Manila, Branch 27 for further proceedings.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Leonen, JJ., concur.

July 26, 2013

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____July 17, 2013____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 26, 2013 at 10:25 a.m.

Very truly yours,

(SGD)

LUCITA ABJELINA SORIANO

Division Clerk of Court

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Isaias P. Dicdican and Romeo F. Barza, concurring; rollo, pp. 37A-47.

[2] Id. at 48-49.

[3] Records, p. 8.

[4] Id. at 7.

[5] Rollo, p. 144.

[6] Records, pp. 15-19.

[7] Id. at 5.

[8] Id. at 4-6.

[9] Id. at 1-2.

[10] Id. at 1.

[11] Id. at 66-71.

[12] Id. at 66.

[13] Branch 27, Manila.

[14] Penned by Judge Teresa P. Soriaso; records, pp. 104-105.

[15] Records, pp. 121-122.

[16] CA rollo, pp. 2-26.

[17] Id. at 9.

[18] Rollo, p. 46. (Emphasis in the original)

[19] 466 Phil. 1013 (2004).

[20] Rollo, p. 44.

[21] *Id.* at 44-45.

[22] *Id.* at 46.

[23] *Id.* at 16-17.

[24] G.R. No. 181089, October 22, 2012, 684 SCRA 315.

[25] G.R. No. 188775, August 24, 2011, 656 SCRA 307.

[26] G.R. No. 183824, December 8, 2010, 637 SCRA 615.

[27] *People v. Balao*, G.R. No. 176819, January 26, 2011, 640 SCRA 565, 573; *Go v. The Fifth Division, Sandiganbayan*, 549 Phil. 783, 805 (2007).

[28] *Santos v. People*, G.R. No. 173176, August 26, 2008, 563 SCRA 341, 368.

[29] The Revised Rules of Criminal Procedure, Rule 117, Section 4.

[30] The Revised Rules of Criminal Procedure, Rule 117, Section 5.

[31] The Revised Rules of Criminal Procedure, Rule 117, Section 6.

[32] 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.

[33] *Nollora, Jr. v. People*, G.R. No. 191425, September 7, 2011, 657 SCRA 330, 342; *Teves v. People*, *supra* note 25, at 312; *Antone v. Beronilla*, *supra* note 26, at 627-628.

[34] *Antone v. Beronilla*, *supra* note 26, at 628.

[35] *Id.* at 627.

[36] *Supra* note 19.

[37] *Teves v. People*, *supra* note 25, at 313.

[38] *Id.* at 313-314.

[39] *Montañez v. Cipriano*, *supra* note 24, at 325.

[40] *Id.* at 325-326.

[41] *Teves v. People*, *supra* note 25, at 314.

[42] *Id.*

[43] *Antone v. Beronilla*, *supra* note 26, at 632. (*Italics in the original*)

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