

LUISITO G. PULIDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 220149. July 27, 2021

Ponente: HERNANDO, J.

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HERNANDO, J.:

May an accused indicted for Bigamy be exculpated on the basis of the judicial declaration of nullity of his first or second marriage?

Challenged in this Petition for Review on Certiorari[1] are the March 17, 2015 Decision[2] and the August 18, 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 33008 which, affirmed with modification the June 22, 2009 Decision[4] of the Regional Trial Court (RTC), Branch 275 of Las Piñas City in Criminal Case No. 08-0166 which found petitioner Luisito G. Pulido (Pulido) guilty beyond reasonable doubt of Bigamy.

The Antecedents:

Pulido and Rowena U. Baleda (Baleda) were charged before the RTC with Bigamy in an Information[5] that reads:

That on or about the 31[st] day of July 2005, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court the above-named accused, being then legally married to the complainant NORA A. PULIDO, which marriage is still existing and has not been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second marriage with one ROWENA U. BALEDAL, who knowingly consented thereto, which second marriage has all the requisites for validity.

CONTRARY TO LAW.[6]

Petitioner pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

Records show that on September 5, 1983, then 16-year old petitioner married his teacher, then 22-year old private complainant Nora S. Arcon (Arcon) in a civil ceremony at the Municipal Hall of Rosario, Cavite solemnized by then Mayor Calixto D. Enriquez.[7] Their marriage was blessed with a child born in 1984.[8]

The couple lived together until 2007 when Pulido stopped going home to their conjugal dwelling. When confronted by Arcon, Pulido admitted to his affair with Baleda. Arcon likewise learned that Pulido and Baleda entered into marriage on July 31, 1995 which was solemnized by Reverend Conrado P. Ramos. Their Marriage Certificate indicated Pulido's civil status as single.[9]

Hurt by the betrayal, Arcon charged[10] Pulido and Baleda with Bigamy on December 4, 2007. In his defense, Pulido insisted that he could not be held criminally liable for bigamy because both his marriages were null and void. He claimed that his marriage with Arcon in 1983 is null and void for lack of a valid marriage license while his marriage with Baleda is null and void for lack of a marriage ceremony.

Baleda, on the other hand, claimed that she only knew of Pulido's prior marriage with Arcon sometime in April

2007. She alleged that even prior to the filing of the bigamy case, she already filed a Petition to Annul her marriage with Pulido before the RTC of Imus, Cavite docketed as Civil Case No. 1586-07. In a Decision[11] dated October 25, 2007, the RTC declared her marriage with Pulido as null and void for being bigamous in nature. This ruling attained finality, there being no appeal filed thereto.[12]

Ruling of the Regional Trial Court:

In its June 22, 2009 Decision,[13] the trial court convicted petitioner of Bigamy and acquitted Baleda.

In so ruling, the RTC dismissed Pulido's claim that both his marriages are void. As to the first marriage, the trial court noted that the certifications issued by the Civil Registrar merely proved that the marriage license and marriage application could not be found, not that they never existed, or were never issued. It held that the marriage certificate which reflected on its face the marriage license number of Pulido and Arcon's marriage has a higher probative value than the certifications issued by the Civil Registrar.

Moreover, the trial court noted that the testimony of Pulido's witness shows only irregularities in the formal requisites of Pulido's second marriage which did not affect its validity. Thus, the RTC upheld the validity of Pulido's marriage with Arcon.

The fallo of the RTC judgment reads:

WHEREFORE, judgment is hereby rendered ACQUITTING accused Rowena M. Baleda. In turn, accused LUISITO G. PULIDO is found GUILTY beyond reasonable doubt of the crime of bigamy and he is hereby sentenced to suffer an indeterminate prison term of 2 years, 4 months and 1 day of prision correccional as minimum to 6 years and 1 day of prision mayor as maximum and to suffer the accessory penalty provided for by law and to pay the cost.

SO ORDERED.[14]

Ruling of the Court of Appeals:

Pulido appealed his conviction to the appellate court on the ground that the first element of the crime, i.e., the subsistence of a valid marriage, was absent. Pulido maintained that his first marriage to Arcon is void ab initio for lack of a marriage license while his marriage with Baleda is also void since there was no marriage ceremony performed. In any case, his marriage with Baleda has already been judicially declared as void ab initio even before the filing of the Information for Bigamy against him and Baleda with the trial court.

The appellate court, in its assailed March 17, 2015 Decision,[15] sustained petitioner's conviction but modified the penalty. The CA also found that all the elements of bigamy were present since Pulido entered into a second marriage with Baleda while his prior marriage with Arcon was subsisting, and without first having obtained a judicial declaration of the nullity of the prior marriage with Arcon.

The CA was not convinced of Pulido's contention that the first marriage was void for lack of a marriage license. It noted that their Marriage Contract dated September 5, 1983[16] indicated Marriage License No. 7240107. To be considered void due to lack of marriage license, it must be apparent on the marriage contract and supported by a certification from the Civil Registrar that no such marriage license was issued, which are not obtaining in the case at bar.

The Certification dated November 22, 2007 issued by the Civil Registrar did not specifically attest that no marriage license was issued to Pulido and Arcon. Instead, the document merely stated that there was no record of a marriage license and application of Pulido and Arcon on account of a probable termite infestation of the documents from 1979-1983. Also, that the marriage license was obtained only on the day of the marriage itself

did not render the marriage void ab initio since it is merely an irregularity which does not affect the validity of marriage.

The appellate court further ruled that even assuming that the first marriage was void for lack of a marriage license, one may still be held liable for bigamy if he/she enters into a subsequent marriage without first obtaining a judicial declaration of nullity of the prior marriage. Bigamy was consummated the moment Pulido entered into the second marriage without his marriage with Arcon being first judicially declared null and void.

The appellate court anchored its ruling on Article 40 of the Family Code which requires one to first secure a judicial declaration of nullity of marriage prior to contracting a subsequent marriage. It held that pursuant to *Jarillo v. People (Jarillo)*,^[17] Article 40 applies even if the marriage of Pulido with Arcon was governed by the Civil Code. Rules of procedure should be given retroactive effect in so far as it does not prejudice or impair vested or acquired rights. The bigamist cannot obtain and use the subsequent judicial declaration of nullity of his or her prior marriage to avoid his or her prosecution for bigamy.

Likewise, the subsequent declaration of nullity of his second marriage with Baleda would not exonerate him from criminal liability. Their Certificate of Marriage dated July 31, 1995 signed by both Pulido and Baleda clearly indicated that they appeared before Reverend Conrado P. Ramos on their own free will to take each other as husband and wife. As a public document, the marriage contract is presumed to be prima facie correct pursuant to Section 44, Rule 130 of the Rules of Court.

Moreover, the subsequent judicial declaration of the second marriage for being bigamous in nature does not bar the prosecution of Pulido for the crime of bigamy. Jurisprudence dictates that one may still be charged with bigamy even if the second marriage is subsequently declared as null and void so long as the first marriage was still subsisting during the celebration of the second marriage. This is to deter parties from, deliberately and consciously entering into a flawed marital contract and thus escape the consequences of contracting multiple marriages.

The CA ultimately affirmed, the June 22, 2009 Decision of the RTC but with modification as to the penalty imposed, to wit:

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 275, Las Piñas, dated June 22, 2009, which adjudged accused-appellant guilty beyond reasonable doubt of the crime of bigamy is hereby AFFIRMED with MODIFICATION as to the indeterminate penalty imposed on appellant. Accordingly, Luisito G. Pulido is hereby sentenced to suffer an indeterminate prison term of two (2) years, four (4) months and one (1) day of prision correctional, as minimum, to eight (8) years and one (1) day of prision mayor as maximum.

SO ORDERED.^[18]

Pulido filed a Motion for Reconsideration which was denied by the appellate court in its August 18, 2015 Resolution. Hence, this Petition for Review on Certiorari under Rule 45.

Meanwhile, in its November 27, 2015 judgment,^[19] the RTC, Branch 22 of Imus, Cavite, declared Pulido's marriage to Arcon void from the beginning. The said Decision became final and executory as per Certificate of Finality dated May 11, 2016.^[20] Thereafter, on June 29, 2016, the RTC issued, the Decree of Absolute Nullity of Marriage^[21] confirming the absolute nullity of marriage between Pulido and Arcon.

Issues

For adjudication by the Court are the following issues:

- (a) Whether Article 40 of the Family Code applies to the instant case, considering that Pulido's first marriage was contracted during the Civil Code and his second marriage was celebrated during the effectivity of the Family Code;
- (b) Whether a judicial declaration of nullity of the prior marriage as provided under Article 40 of the Family Code may be invoked as a defense in Bigamy cases; and
- (c) In the affirmative, whether a judicial declaration of nullity of marriage secured after the celebration of the second marriage should be considered a valid defense in Bigamy cases.

Petitioner's Arguments:

In the main, Pulido contends that the appellate court should have overturned his conviction in view of the absence of an element of bigamy, i.e., that the offender's first marriage be legally subsisting at the time he contracts the second marriage, since the first marriage is void due to the absence of a marriage license. He asserts that the retroactive application by the trial court and the appellate court of Article 40 of the Family Code to his case, when the governing law at the time of his first marriage was the Civil Code, ran afoul of the constitutional prohibition against ex post facto legislation.

Arguments of the Office of the Solicitor General (OSG):

In its Comment,[22] the OSG stresses that Article 40 of the Family Code applies to the instant case since Pulido's subsequent and bigamous marriage was contracted in 1995 when the Family Code was already in full effect. Thus, unlike the cases cited by petitioner wherein both marriages were contracted prior to the effectivity of the Family Code, Pulido is required to obtain a prior judicial declaration of nullity of his marriage with Arcon as a condition precedent to contracting a subsequent marriage with Baleda. Hence, the fact that Pulido secured a judicial declaration of nullity of his marriage is immaterial since the crime of Bigamy has already been consummated.

The OSG maintains that the appellate court correctly ruled that the certificate of marriage was the best evidence to prove that a marriage ceremony took place, and that the subsequent judicial declaration of Pulido and Baleda's marriage may not be used to exonerate himself from criminal liability.

Our Ruling

This case provides us the opportune occasion to revisit and examine our earlier pronouncements that a judicial declaration of the absolute nullity of a prior void ab initio marriage secured prior to remarriage is required before a prior void ab initio marriage may be considered a valid defense in the prosecution of bigamy. For resolution of this Court is the subsequent judicial declaration of the absolute nullity of Pulido's first marriage with Arcon which he presented as a defense in the criminal prosecution for bigamy against him.

After a careful scrutiny of the records and rigorous reexamination of the applicable law and jurisprudence, we find that there is enough basis to abandon our earlier pronouncement and now hold that a void ab initio marriage is a valid defense in the prosecution for bigamy even without a judicial declaration of absolute nullity. Consequently, a judicial declaration of absolute nullity of either the first and second marriages obtained by the accused is considered a valid defense in bigamy.

In consonance with this, we find the petition meritorious. Hence, Pulido's acquittal from the crime of Bigamy is warranted.

Bigamy - Definition and Elements:

Article 349 of the Revised Penal Code (RPC) defines and penalizes Bigamy, viz.:

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 above provision was taken from Article 486 of the Spanish Penal Code, which reads:

El que contrajere Segundo o ulterior matrimonio sin hallarse legítimamente disuelto el anterior, será castigado con la pena de prision mayor.....[23]

The rationale for prosecuting an individual who contracted a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead, is to preserve and ensure the juridical tie of marriage established by law.[24] For one to be held guilty of bigamy, the prosecution must prove the following: (a) that the offender has been legally married; (b) 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; (c) that he or she contracts a second or subsequent marriage; and (d) that the second or subsequent marriage has all the essential requisites for validity.[25] It is vital 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.[26]

It is undisputed that Pulido married Arcon on September 5, 1983. Thereafter, he contracted a second marriage with Baleda on July 31, 1995 without having his first marriage with Arcon legally dissolved. Pulido and Baleda's marriage has all the essential requisites for validity had it not for the existing first marriage.

Thereafter, Pulido's first marriage with Arcon and second marriage with Baleda were judicially declared void for lack of a valid marriage license and for being bigamous, respectively. Pulido interposed the defense that the subsequent judicial declaration of nullity of his first marriage should exculpate him from criminal liability for bigamy.

Thus, the main issue for consideration of this Court is the necessity of securing a judicial declaration of absolute nullity as a valid defense in the criminal prosecution for bigamy.

Is a judicial declaration of nullity of marriage necessary to establish the invalidity of a void ab initio marriage in a bigamy prosecution?

a. Prior to the effectivity of the Family Code, a void ab initio marriage can be raised as a defense in a bigamy case even without a judicial declaration of its nullity.

The validity of the second marriage is a prejudicial question to the criminal prosecution for bigamy.

Prior to the effectivity of the Family Code, the Court has inconsistent pronouncements concerning the necessity of a judicial declaration of nullity of the prior void marriage as a defense in a bigamy case.

In *People v. Mendoza*[27] (*Mendoza*) and in *People v. Aragon*[28] (*Aragon*), this Court ruled that no judicial

decree is necessary to establish the invalidity of a prior void marriage as a defense in the case of Bigamy, as distinguished from mere annulable or voidable marriages.

In both *Mendoza and Aragon*, the accused contracted a second marriage during the subsistence of his first marriage. Thereafter, the accused entered into a third marriage after the death of his first wife but during the subsistence of the second marriage. The Court ruled that the second marriage is void for having been contracted during the existence of the first marriage. Hence, there is no need for a judicial declaration that said second marriage is void. Consequently, with the second marriage being void and the first marriage terminated due to the death of the first wife, the accused did not commit bigamy when he contracted a third marriage.[29]

However, in *Gomez v. Lipana*[30] (*Gomez*) and *Vda. de Consuegra v. Government Service Insurance System*[31] (*Consuegra*), the Court deviated from its previous pronouncements in *Mendoza and Aragon* when it declared that a judicial declaration of nullity of the second marriage is necessary even though it is presumed to be null and void for it was contracted during the subsistence of a prior marriage. Subsequently, in *Odayat v. Amante*[32] (*Odayat*) and *Tolentino v. Paras*[33] the Court again reverted to the doctrine laid down in *Mendoza and Aragon*.

Nonetheless, in *Wiegel v. Sempio-Diy*[34] (*Wiegel*), the Court ruled that there is a need for a judicial declaration of nullity of a void marriage before one can enter into another marriage. Then, in *Yap v. Court of Appeals*[35] the Court again held otherwise.

However, in *Apiag v. Cantero*[36] and *Ty v. Court of Appeals*,[37] this Court clarified that the requirement of a judicial decree of nullity does not apply to marriages that were celebrated before the effectivity of the Family Code, which continue to be governed by *Mendoza, Aragon and Odayat* wherein a void ab initio marriage can be raised as a defense in a bigamy case even without a judicial declaration of its nullity.

As to the nullity of the second marriage, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) pointed out that in *People v. Mora Dumpo* (*Dumpo*)[38] and *People v. Lara* (*Lara*)[39] the Court decided on the issue of the validity of the second marriage in the same criminal proceeding for bigamy to determine the guilt of the accused, i.e. if he contracted a valid second marriage during the subsistence of the first marriage. Patently, the Court allowed the accused in *Dumpo* and *Lara* to Interpose the defense of a void ab initio second marriage other than it being bigamous in the criminal prosecution for bigamy.

However, in *Merced v. Diez* (*Merced*),[40] the Court recognized the action to annul the second marriage as a prejudicial question in a prosecution for bigamy, to wit:

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

We have, therefore, in the case at bar, the issue of the validity of the second marriage, which must be determined before hand in the civil action, before the criminal action can proceed. We have a situation where the issue of the validity of the second marriage can be determined or must first be determined in the civil action before the criminal action for bigamy can be prosecuted. The question of the validity of the second marriage is, therefore, a prejudicial question, because determination of the validity of the second, marriage is determinable, in the civil action and must precede the criminal action for bigamy.[41] (Emphasis supplied.)

In *Zapanta v. Montesa* (*Zapanta*)[42] the Court suspended the proceedings in the criminal case for bigamy because of a subsequent civil action filed by the accused to annul his second marriage on the ground of vitiated consent. The Court held that:

We have heretofore defined a prejudicial question as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal (*People vs. Aragon*, G.R. No. L-5930, February 17, 1954). The prejudicial question — we further said — must be determinative of the case before the court, and jurisdiction to try the same must be lodged in another court (*People vs. Aragon*, *supra*). These requisites are present in the case at bar. Should the question for annulment of the second marriage pending in the Court of First Instance of Pampanga prosper on the ground that, according to the evidence, petitioner's consent thereto was obtained by means of duress, force and intimidation, it is obvious that his act was involuntary and can not be the basis of his conviction for the crime of bigamy with which he was charged, in the Court of First Instance of Bulacan. Thus the issue involved in the action for the annulment of the second marriage is determinative of petitioner's guilt or innocence of the crime of bigamy. On the other hand, there can be no question that the annulment of petitioner's marriage with respondent Yco on the grounds relied upon in the complaint filed in the Court of First Instance of Pampanga is within the jurisdiction of said court.

In the *Aragon* case already mentioned (*supra*) we held that if the defendant in a case for bigamy claims that the first marriage is void and the right to decide such validity is vested in another court, the civil action for annulment must first be decided before the action for bigamy can proceed. There is no reason not to apply the same rule when the contention of the accused is that the second marriage is void on the ground that he entered into it because of duress, force and intimidation.[43] (Emphasis supplied.)

However, in *Landicho v. Relova*[44] (*Landicho*) and reiterated in *Donato v. Luna*[45] the Court clarified that it must be shown that the accused's consent must be the one whose consent was obtained by means of duress, force and intimidation to show that the act in the second marriage is involuntary before he or she can raise the action for nullity of second marriage as a prejudicial question in the prosecution for bigamy.[46]

Then, in *De la Cruz v. Judge Ejercito* (*De la Cruz*),[47] the Court again dismissed the bigamy case as "moot and untenable" in view of the final judgment obtained by the accused annulling the second marriage. The finding in the annulment case that the second marriage was a nullity is determinative of the accused's innocence in the bigamy case.[48]

Thus, when both the prior and subsequent marriages were contracted prior to the effectivity of the Family Code, a void ab initio marriage can be raised as a defense in a bigamy case even without a judicial declaration of its nullity. Nonetheless, the Court recognized that an action for nullity of the second marriage is a prejudicial question to the criminal prosecution for bigamy.

b. Article 40 of the Family Code
applies retroactively on marriages
celebrated before the Family Code
insofar as it does not prejudice or
impair vested or acquired rights.

Thus, a judicial declaration of nullity
is required for prior marriages

contracted before the effectivity of
the Family Code but only for

purposes of remarriage.

Upon the enactment of the Family Code on August 3, 1988, the doctrine laid down in *Gomez, Consuegra and Wiegel* that there is a need for a judicial declaration of nullity of a prior "void" marriage was encapsulated in Article 40, which reads:

Article 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 previous marriage void.

The prevailing rule, therefore, is that even if the marriage is void, a final judgment declaring it void for purposes of remarriage is required. The Commission, in drafting Article 40, considered the Court's ruling in *Landicho*[49] that parties to a marriage should not be permitted to judge for themselves its nullity; only competent courts have such authority.[50] In *Domingo v. Court of Appeals (Domingo)*,[51] the Court elucidated on the intent behind the provision, thus:

"Justice Caguioa explained that his idea is that one cannot determine for himself whether or not his marriage is valid and that a court action is needed. xxx

x x x x

Prof. Baviera remarked that the original idea in the provision is to require first a judicial declaration of a void marriage and not annulable marriages, with which the other members concurred. Judge Diy added that annulable marriages are presumed valid until a direct action is filed to annul it, which the other members affirmed. Justice Puno remarked that if this is so, then the phrase 'absolute nullity' can stand since it might result in confusion if they change the phrase to 'invalidity' if what they are referring to in the provision is the declaration that the marriage is void.

Prof. Bautista commented that they will be doing away with collateral defense as well as collateral attack. Justice Caguioa explained that the idea in the provision is that there should be a final judgment declaring the marriage void and a party should not declare for himself whether or not the marriage is void, which the other members affirmed. Justice Caguioa added that they are, therefore, trying to avoid a collateral, attack on that point. Prof. Bautista stated that there are actions which are brought on the assumption that the marriage is valid. He then asked: Are they depriving one of the right to raise the defense that he has no liability because the basis of the liability is void? Prof. Bautista added that they cannot say that there will be no judgment on the validity or invalidity of the marriage because it will be taken up in the same proceeding. It will not be a unilateral declaration that it is a void marriage. Justice Caguioa saw the point of Prof. Bautista and suggested that they limit the provision to remarriage. He then proposed that Article 39 be reworded as follows:

The absolute nullity of a marriage for purposes of remarriage may be invoked only on the basis of final judgment ...

Justice Puno suggested that the above be modified as follows:

The absolute nullity of a previous marriage may be invoked for purposes of establishing the validity of a subsequent marriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41.

Justice Puno later modified the above as follows:

For the purpose of establishing the validity of a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

Justice Caguioa commented that the above provision is too broad and will not solve the objection of Prof.

Bautista. He proposed that they say:

For the purpose of entering into a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

Justice Caguioa explained that the idea in the above provision is that if one enters into a subsequent marriage without obtaining a final judgment declaring the nullity of a previous marriage, said subsequent marriage is void ab initio. xxx

After further deliberation, Justice Puno suggested that they go back to the original wording of the provision as follows:

The absolute nullity of a previous marriage may be invoked for purposes of remarriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41."[52] (Emphasis supplied.)

To repeat, Pulido's first marriage with Arcon was contracted in 1983 or before the effectivity of the Family Code while his second marriage with Baleda was celebrated in 1995, during the effectivity of the said law. Pulido assails the retroactive application of Article 40 of the Family Code on his case which requires him to obtain a judicial declaration of absolute nullity before he can contract another marriage.

When the prior marriage was contracted prior to the effectivity of the Family Code while the subsequent marriage was contracted during the effectivity of the said law, we recognize the retroactive application of Article 40 of the Family Code but only insofar as it does not prejudice or impair vested or acquired rights. In *Atienza v. Brillantes, Jr.*, [53] and reiterated in *Jarillo* [54] and in *Montañez v. Cipriano (Montañez)*, [55] we declared thus:

As far back as 1995, in *Atienza v. Brillantes, Jr.*, the Court already made the declaration that Article 40, which is a rule of procedure, should be applied retroactively because Article 256 of the Family Code itself provides that said "Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights." The Court went on to explain, thus:

The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. The reason is that as a general rule, no vested right may attach to, nor arise from, procedural laws. [56] (Emphasis supplied.)

Applying the foregoing jurisprudence and keeping in mind its purpose, we hold that Article 40 has retroactive application on marriages contracted prior to the effectivity of the Family Code but only for the purpose of remarriage, as the parties are not permitted to judge for themselves the nullity of their marriage. In other words, in order to remarry, a judicial declaration of nullity is required for prior marriages contracted before the effectivity of the Family Code. Without a judicial declaration of absolute nullity of the first marriage having been obtained, the second marriage is rendered void ab initio even though the first marriage is also considered void ab initio. The only basis for establishing the validity of the second marriage is the judicial decree of nullity of the first marriage.

However, in a criminal prosecution for bigamy, the parties may still raise the defense of a void ab initio marriage even without obtaining a judicial declaration of absolute nullity if the first marriage was celebrated before the effectivity of the Family Code. Such is still governed by the rulings in *Mendoza*, *Aragon* and *Odayat* which are more in line with the rule that procedural rules are only given retroactive effect insofar as they do not prejudice or impair vested or acquired rights.

In this case, Pulido's marriage with Arcon was celebrated when the Civil Code was in effect while his subsequent marriage with Baleda was contracted during the effectivity of the Family Code. Hence, Pulido is required to

obtain a judicial decree of absolute nullity of his prior void ab initio marriage but only for purposes of remarriage. As regards the bigamy case, however, Pulido may raise the defense of a void ab initio marriage even without obtaining a judicial declaration of absolute nullity.

c. Does the subsequent declaration of the nullity of the first and second marriages constitute a valid defense in bigamy?

We rule in the affirmative.

Notably, during the pendency of the bigamy case, Pulido obtained a judicial declaration of absolute nullity of his first marriage with Arcon which he presented as his defense. However, the courts a quo, relying on settled jurisprudence, denied the same and convicted him of bigamy.

We are not unmindful of the fact that we have consistently ruled in a long line of jurisprudence that a judicial declaration of absolute nullity obtained prior to the celebration of the second marriage is required as a valid defense in bigamy. Upon the enactment of the Family Code, specifically the requirement laid down in Article 40, we overturned our earlier rulings in *Mendoza*, *Aragon* and *Odayat* and declared that a subsequent judicial declaration of nullity of the first marriage could not be considered as a valid defense in the prosecution for bigamy. Corollary, a judicial declaration obtained subsequent to the celebration of the second marriage is considered immaterial in the criminal prosecution for bigamy as relied upon by the courts a quo in the case at bar.

With regard to the second marriage, our earlier rulings in *Dumpo* and *Lara* were likewise overturned. In effect, *Merced*, *Zapanta* and *De la Cruz* declaring that an action for nullity of the second marriage is a prejudicial question to the prosecution for bigamy is abandoned. The existing rule, therefore, is that a judicial declaration of nullity of the second marriage is not a valid defense in bigamy nor a prejudicial question to a criminal action for bigamy.

Now, this Court has the timely opportunity to review and revisit the rationale of our earlier pronouncements, and therefore, adopt a more liberal view in favor of the accused. To start, a brief examination of our earlier rulings is in order.

In *Domingo*,^[57] a declaration of the absolute nullity of a marriage was explicitly required either as a cause of action or a defense in view of the pronouncement in Article 40 of the Family Code. "[T]he requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy."^[58] The policy behind the requirement for a judicial declaration is explained thus:

Marriage, a sacrosanct institution, declared, by the Constitution as an "inviolable social institution, is the foundation of the family;" as such, it "shall be protected by the State." In more explicit terms, the Family Code characterizes it as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life." So crucial are marriage and the family to the stability and peace of the nation that their "nature, consequences, and incidents are governed by law and not subject to stipulation." As a matter of policy, therefore, the nullification of a marriage for the purpose of contracting another cannot be accomplished merely on the basis of the perception of both parties or of one that their union is so defective with respect to the essential requisites of a contract of marriage as to render it void ipso jure and with no legal effect - and nothing more. Were this so, this inviolable social institution would be reduced to a mockery and would rest on very shaky foundations indeed. And the grounds for nullifying

marriage would be as diverse and far-ranging as human ingenuity and fancy could conceive. For such a socially significant institution, an official pronouncement through the courts, and nothing less, will satisfy the exacting norms of society. Not only would such an open and public declaration by the courts definitively confirm the nullity, of the contract of marriage, but the same would be easily verifiable through records accessible to everyone.[59] (Emphasis supplied.)

Mercado v. Tan[60] (Mercado) reiterated the ruling in Domingo and abandoned the rulings in Mendoza and Aragon as the latter were already set aside by Article 40 of the Family Code. Mercado held that to allow the accused to subsequently obtain a judicial declaration of nullity of marriage would encourage delay in the prosecution of bigamy cases as the accused could simply file a petition to declare the previous marriage void and invoke the pendency of the action as a prejudicial question in the criminal case.[61] As ruled by the Court in Mercado, the subsequently acquired judicial declaration of absolute nullity of the first marriage is immaterial as the crime of bigamy had already been consummated:

In the instant case, petitioner contracted a second marriage although there was yet no judicial declaration of nullity of his first marriage. In fact, he instituted the Petition to have the first marriage declared void only after complainant had filed a letter-complaint charging him with bigamy. By contracting a second marriage while the first was still subsisting, he committed the acts punishable under Article 349 of the Revised Penal Code.

That he subsequently obtained a judicial declaration of the nullity of the first marriage was immaterial. To repeat, the crime had already been consummated by then. Moreover, his view effectively encourages delay in the prosecution of bigamy cases; an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.[62] (Emphasis supplied.)

Marbella-Bobis v. Bobis[63] (Marbella-Bobis) held that without a judicial declaration of nullity, the first marriage is presumed to be subsisting and for all legal intents and purposes, the parties are considered as married at the time the second marriage was celebrated.[64] Hence, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy,[65] Thus, the Court declared that:

In the light of Article 40 of the Family Code, respondent, without first having obtained the judicial declaration of nullity of the first marriage, cannot be said to have validly entered into the second marriage. Per current jurisprudence, a marriage though void still needs a judicial declaration of such fact before any party can marry, again; otherwise the second marriage will also be void. The reason is that, without a judicial declaration of its nullity, the first marriage is presumed to be subsisting. In the case at bar, respondent was for all legal intents and purposes regarded as a married man at the time he contracted his second marriage with petitioner. Against this legal backdrop, any decision in the civil action for nullity would not erase the fact that respondeat entered into a second marriage during the subsistence of a first marriage. Thus, a decision in the civil case is not essential to the determination of the, criminal charge. It is, therefore, not a prejudicial question. As stated above, respondent cannot be permitted to use his own malfeasance to defeat the criminal action against him.[66] (Emphasis supplied.)

Abunado v. People[67] (Abunado) again ruled that the subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated. Hence, under the law, a marriage, whether void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding.[68]

Jarillo[69] maintained the earlier pronouncements in Marbella-Bobis and Abunado and further declared that the subsequent judicial declaration of nullity of marriage could not be considered as a valid defense in the prosecution for bigamy. It declared that Article 349 of the RPC penalizes the mere act of contracting a second or. subsequent

marriage during the subsistence of a valid marriage.[70]

Montañez[71] held that the annulment of the first marriage on the ground of psychological incapacity does not justify the dismissal of the bigamy case. The parties to a marriage are not permitted to judge for themselves its nullity. So long as there is no such declaration of nullity, the presumption is that the marriage exists. Thus, a party who contracts a second marriage before a judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy.[72]

In *Teves v. People*,[73] the Court held that the filing of the petition for the declaration of nullity of the earlier marriage prior to the filing of information for bigamy cannot be allowed as a defense for the bigamy case. Criminal culpability attaches to the offender upon the commission of the offense, thus, liability instantly appends to him until extinguished as provided by law. The finality of the judicial declaration of nullity of the previous marriage cannot be made to retroact to the date of the bigamous marriage.[74]

Antone v. Beronilla[75] (*Antone*) held that the declaration of nullity of the marriage obtained after the celebration of the subsequent marriage is immaterial for the purpose of establishing that the facts alleged in the information for bigamy do not constitute an offense. Neither may such be interposed as a defense by the accused 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.[76] *People v. Odtuhan*[77] reiterated the ruling in *Antone* that the time of the filing of the criminal complaint or information is material only for determining prescription and that obtaining a declaration of nullity of marriage before the filing of the complaint for bigamy is not a valid defense in the prosecution.[78]

In *Vitangcol v. People*,[79] the Court again ruled that even assuming that the first marriage was solemnized without a marriage license, the accused remains liable for bigamy as his first marriage was not judicially declared void nor his first wife judicially declared presumptively dead under the Civil Code.[80] To remove the requirement of judicial declaration of nullity would render Article 349 of the RPC useless as the bigamist would simply claim that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first.[81]

Interestingly however, in *Morigo v. People (Morigo)*,[82] the Court held that the marriage of Lucio and Lucia was considered a void and inexistent marriage, meaning there was no marriage to begin with, in view of the absence of an actual marriage ceremony performed by a solemnizing officer between the contracting parties. The Court declared that such declaration of nullity retroacts to the date of the first marriage.

Hence, for all intents and purposes, from the date of the declaration of the first marriage as void ab initio retroactive to the date of the celebration of the first marriage, the accused was considered never married under the eyes of the law. Consequently, with the declaration of nullity of the first marriage, the first element of bigamy, that is, that the accused must have been legally married, was lacking. Thus, the accused was acquitted based on the subsequent declaration of nullity of the first marriage as there was no first marriage to speak of.[83]

Morigo was distinguished from *Mercado* where, in the latter case, the first marriage was declared void ab initio for lack of a valid marriage license but the marriage was actually solemnized twice. Thus, in *Mercado*, the subsequent decree of absolute nullity of the first marriage was not considered a valid defense in the bigamy case. The main reason was that in *Mercado*, the first marriage appeared to have transpired although later declared void ab initio for lack of a valid marriage license while in *Morigo* no marriage ceremony at all was performed by a duly authorized solemnizing officer.[84] Although both first marriages were subsequently declared void ab initio, the rulings in *Morigo* and *Mercado* are at variance as to the effects and consequences of a void ab initio marriage.

With regard to a void ab initio second marriage, the Court declared in *Tenebro v. Court of Appeals*[85] (*Tenebro*) that the subsequent declaration of nullity of the second marriage is immaterial in the prosecution for bigamy, to wit:

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

As a second or subsequent marriage contracted during the subsistence of petitioner's valid marriage to Villareyes, petitioner's marriage to Ancajas would be null and void ab initio completely regardless of petitioner's psychological capacity or incapacity. Since a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of this second marriage is not per se an argument for the avoidance of criminal liability for bigamy. Pertinently, Article 349 of the Revised Penal Code criminalizes "any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings". A plain reading of the law, therefore, would indicate that the provision penalizes the mere act of contracting a second or a subsequent marriage during the subsistence of a valid marriage.[86] (Emphasis supplied.)

Jarillo reiterated the ruling in *Tenebro* that a judicial declaration of nullity of the second marriage will not absolve the accused from the bigamy charge, thus:

For the very same reasons elucidated in the above-quoted cases, petitioner's conviction of the crime of bigamy must be affirmed. The subsequent judicial declaration of nullity of petitioner's two marriages to Alocillo cannot be considered a valid defense in the crime of bigamy. The moment petitioner contracted a second marriage without the previous one having been judicially declared null and void, the crime of bigamy was already consummated because at the time of the celebration of the second marriage, petitioner's marriage to Alocillo, which had not yet been declared null and void by a court of competent jurisdiction, was deemed valid and subsisting. Neither would a judicial declaration of the nullity of petitioner's marriage to Uy make any difference. As held in *Tenebro*, "[s]ince a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of this second marriage is not per se an argument for the avoidance of criminal liability for bigamy. ... A plain reading of [Article 349 of the Revised Penal Code], therefore, would indicate that the provision penalizes the mere act of contracting a second or subsequent marriage during the subsistence of a valid marriage".[87] (Emphasis supplied.)

Also, in *Nollora, Jr. v. People*[88] and *Lasanas v. People*,[89] the Court retold its ruling in *Tenebro* by declaring that a subsequently acquired judicial declaration of nullity of the second marriage cannot exculpate the accused from the criminal liability for bigamy. *Tenebro* and the succeeding cases, in effect, abandoned our rulings in *Dumpo* and *Lara*, which allowed the accused to interpose the defense of a void ab initio second marriage in the same criminal proceeding; and *Merced*, *Zapanta* and *De la Cruz* which recognized that the action for nullity of the second marriage is a prejudicial question to the criminal action for bigamy.

A thorough review of the foregoing rulings shows that the judicial declarations of absolute nullity of the first and second marriages obtained subsequent to the celebration of the second marriage are not valid defenses in the criminal prosecution for bigamy. The only valid defense recognized by the Court in the above-mentioned cases is a judicial declaration of absolute nullity of the first marriage obtained by the accused prior to the celebration of the second marriage.

After a careful consideration, this Court is constrained to abandon our earlier rulings that a judicial declaration of absolute nullity of the first, and/or second marriages cannot be raised as a defense by the accused in a criminal

prosecution for bigamy. We hold that a judicial declaration of absolute nullity is not necessary to prove a void ab initio prior and subsequent marriages in a bigamy case. Consequently, a judicial declaration of absolute nullity of the first and/or second marriages presented by the accused in the prosecution for bigamy is a valid defense, irrespective of the time within which they are secured.

The aforesaid conclusion is anchored on and justified by the retroactive effects of a void ab initio marriage, the legislative intent of Article 40 of the Family Code and the fundamental, rules of construction governing penal laws.

Retroactive effects of a void ab initio marriage in criminal prosecutions for bigamy

The Family Code specifically provides that certain marriages are considered void ab initio namely, Articles 35, 36, 37, 38, 44 and 53. These marriages are void from the beginning due to the absence of any of the essential or formal requisites, for being incestuous, or by reason of public policy. Void marriages, like void contracts, are inexistent from the very beginning.[90] To all legal intents and purposes, the void ab initio marriage does not exist and the parties thereto, under the lens of the law, were never married.[91]

Thus, we ruled in *Niñal v. Bayadog*[92] (*Niñal*) that under ordinary circumstances, the effect of a void marriage, so far as concerns the conferment of legal rights upon the parties, is as though no marriage had ever taken place. A void marriage produces no legal effects except those declared by law concerning the properties of the alleged spouses, co-ownership or ownership through actual joint contribution, and its effect on the children born to void marriages as provided in Article 50 in relation to Articles 43 and 44 as well as Articles 51, 53, and 54 of the Family Code

And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife. Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage; the exception to this is Article 40 of the Family Code, which expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, and such absolute nullity can be based only on a final judgment to that effect.[93] However, it must be borne in mind that the requirement of Article 40 is merely for purposes of remarriage and does not affect the accused's right to collaterally attack the validity of the void ab initio marriage in criminal prosecution for bigamy.

In contrast, voidable marriages under Article 45 of the Family Code are considered valid and produces all its civil effects until it is set aside by a competent court in an action for annulment. It is capable of ratification, and cannot be assailed collaterally except in a direct proceeding.[94] It is considered valid during its subsistence and only ceases upon the finality of the decree of annulment of a competent court, "Indeed, the terms "annul" and "null and void" have different legal connotations and implications. Annul means to reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with whereas null and void is something that does not exist from the beginning. A marriage that is annulled presupposes that it subsists but later ceases to have legal effect when it is terminated through a court action. But in nullifying a marriage, the court simply declares a status or condition which already exists from the very beginning." [95] In this respect, the effects of a declaration of the nullity of a void marriage by a competent court retroacts to the date of the celebration thereof, since the spouses were considered never married under the lens of the law.

In *Castillo v. Castillo*, [96] we distinguished void and voidable marriages, thus:

Under the Civil Code, a void marriage differs from a voidable marriage in the following ways: (1) a void marriage is nonexistent — i.e., there was no marriage from the beginning — while in a voidable marriage, the marriage is valid until annulled by a competent court; (2) a void marriage cannot be ratified, while a voidable marriage can be ratified by cohabitation; (3) being nonexistent, a void marriage can be collaterally attacked, while a voidable marriage cannot be collaterally attacked; (4) in a void marriage, there is no conjugal partnership and the offspring are natural children by legal fiction, while in voidable marriage there is conjugal partnership and the children conceived before the decree of annulment are considered legitimate; and (5) "in a void marriage no judicial decree to establish the invalidity is necessary," while in a voidable marriage there must be a judicial decree.[97] (Emphasis supplied.)

Being inexistent under the eyes of the law, the nullity of a void marriage can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the spouses.[98] A void marriage is ipso facto void without need of any judicial declaration of nullity; the only recognized exception under existing law is Article 40 of the Family Code where a marriage void ab initio is deemed valid for purposes of remarriage, hence necessitating a judicial declaration of nullity before one can contract a subsequent marriage.

Clearly, when the first marriage is void ab initio, one of the essential elements of bigamy is absent, i.e. a prior valid marriage. There can be no crime when the very act which was penalized by the law, i.e. contracting another marriage during the subsistence of a prior legal or valid marriage, is not present. 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 begin with.[99] Thus, an accused in a bigamy case should be allowed to raise the defense of a prior void ab initio marriage through competent evidence other than the judicial decree of nullity.

Apropos, with the retroactive effects of a void ab initio marriage, there is nothing to annul nor dissolve as the judicial declaration of nullity merely confirms the inexistence of such marriage. Thus, the second element of bigamy, i.e. that the former marriage has not been legally dissolved or annulled, is wanting in case of void ab initio prior marriage. What Article 349 of the RPC contemplates is contracting a subsequent marriage when a voidable or valid first marriage is still subsisting. As expounded by Associate Justice Estela M. Perlas-Bernabe, Article 349 of the RPC was patterned after the *Codigo Penal*, which was enacted when the law governing marriages was the Spanish Civil Code of 1889, which provides that marriages may be dissolved either through annulment or divorce. The term "former marriage", therefore, in the second element of bigamy refers to voidable or valid marriages which may be dissolved by annulment or divorce, respectively. Hence, Article 349 should be construed to pertain only to valid and voidable marriages.

In effect, when the accused contracts a second marriage without having the first marriage dissolved or annulled, the crime of bigamy is consummated as the valid or voidable first marriage still subsists without a decree of annulment by a competent court. In contrast, when the first marriage is void ab initio, the accused cannot be held liable for bigamy as the judicial declaration of its nullity is not tantamount to annulment nor dissolution but merely a declaration of a status or condition that no such marriage exists.

In the same manner, when the accused contracts a second or subsequent marriage that is void ab initio, other than it being bigamous, he/she cannot be held liable for bigamy as the effect of a void marriage signifies that the accused has not entered into a second or subsequent marriage, being inexistent from the beginning. Thus, the element, "that he or she contracts a second or subsequent marriage" is lacking. A subsequent judicial declaration of nullity of the second marriage merely confirms its inexistence and shall not render the accused liable for bigamy for entering such void marriage while the first marriage still subsists. Consequently, the accused in bigamy may validly raise a void ab initio second or subsequent marriage even without a judicial declaration of

nullity.

True, a marriage is presumed to be valid even if the same is void ab initio without a judicial declaration of its absolute nullity in view of Article 40 of the Family Code. However, the accused in a bigamy case should not be denied the right to interpose the defense of a void ab initio marriage, which effectively retroacts to the date of the celebration of the first marriage.

Guided by the foregoing legal precepts, we find that our ruling in *Mendoza, Aragon and Odayat* is more consistent with the retroactive effects of a void ab initio marriage. However, the Court has since extended the application of Article 40 of the Family Code to criminal prosecutions for bigamy and overturned the principle laid down in *Mendoza, Aragon and Odayat* as well as in *Dumpo and Lara*. This restriction imposed on the accused wholly disregards the inexistent nature and retroactive effects of a void marriage. In view thereof, a revisit of the application of Article 40 of the Family Code to criminal prosecutions for bigamy is imperative.

Article 40 of the Family Code requires a judicial declaration of absolute nullity for purposes of remarriage but not as a defense in bigamy. Article 40 did not amend or repeal Article 349 of the RPC.

The Minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees discussed that the judicial declaration of absolute nullity of a previous marriage was required for the purpose of establishing the validity of the subsequent marriage and to ensure that parties to a marriage should not be permitted to judge for themselves its nullity, as only competent courts have such authority. Domingo, citing the minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees, elucidated on how the provisions of Article 40 of the Family Code were framed and the intent behind the requirement laid down therein, to wit:

The Family Law Revision Committee and the Civil Code Revision Committee which drafted what is now the Family Code of the Philippines took the position that parties to a marriage should not be allowed to assume that their marriage is void even if such be the fact but must first secure a judicial declaration of the nullity of their marriage before they can be allowed to marry again. This is borne out by the following minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees where the present Article 40, then Art. 39, was discussed.

"B. Article 39. —

The absolute nullity of a marriage may be invoked only on the basis of a final judgment declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that the above provision should include not only void but also voidable marriages. He then suggested that the above provision be modified as follows:

The validity of a marriage may be invoked only ...

Justice Reyes (J.B.L. Reyes), however, proposed that they say:

The validity or invalidity of a marriage may be invoked only ...

On the other hand, Justice Puno suggested that they say:

The invalidity of a marriage may be invoked only ...

Justice Caguioa explained that his idea is that one cannot determine for himself whether or not his marriage is valid and that a court action is needed. Justice Puno accordingly proposed that the provision be modified to read:

The invalidity of a marriage may be invoked only on the basis of a final judgment annulling the marriage or declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that in annulment, there is no question. Justice Puno, however, pointed out that, even if it is a judgment of annulment, they still have to produce the judgment.

Justice Caguioa suggested that they say:

The invalidity of a marriage may be invoked only on the basis of a final judgment declaring the marriage invalid, except as provided in Article 41.

Justice Puno raised the question: When a marriage is declared invalid, does it include the annulment of a marriage and the declaration that the marriage is void? Justice Caguioa replied in the affirmative. Dean Gupit added that in some judgments, even if the marriage is annulled, it is declared void. Justice Puno suggested that this matter be made clear in the provision.

Prof. Baviera remarked that the original idea in the provision is to require first a judicial declaration of a void marriage and not annulable marriages, with which the other members concurred. Judge Diy added that annulable marriages are presumed valid until a direct action is filed to annul it, which the other members affirmed. Justice Puno remarked that if this is so, then the phrase 'absolute nullity' can stand since it might result in confusion if they change the phrase to 'invalidity' if what they are referring to in the provision is the declaration that the marriage is void.

Prof. Bautista commented that they will be doing away with collateral defense as well as collateral attack. Justice Caguioa explained that the idea in the provision is that there should be a final judgment declaring the marriage void and a party should not declare for himself whether or not the marriage is void, which the other members affirmed. Justice Caguioa added that they are, therefore, trying to avoid a collateral attack on that point. Prof. Bautista stated that there are actions which are brought on the assumption that the marriage is valid. He then asked: Are they depriving one of the right to raise the defense that he has no liability because the basis of the liability is void? Prof. Bautista added that they cannot say that there will be judgment on the validity or invalidity of the marriage because it will be taken up in the same proceeding. It will not be a unilateral declaration that it is a void marriage. Justice Caguioa saw the point of Prof. Bautista and suggested that they limit the provision to remarriage. He then proposed that Article 39 be reworded as follows:

The absolute nullity of a marriage for purposes of remarriage may be invoked only on the basis of final judgment ...

Justice Puno suggested that the above be modified as follows:

The absolute nullity of a previous marriage may be invoked for purposes of establishing the validity of a subsequent marriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41.

Justice Puno later modified the above as follows:

For the purpose of establishing the validity of a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

Justice Caguioa commented that the above provision is too broad and will not solve the objection of Prof. Bautista.

He proposed that they say:

For the purpose of entering into a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

Justice Caguioa explained that the idea in the above provision is that if one enters into a subsequent marriage without obtaining a final judgment declaring the nullity of a previous marriage, said subsequent marriage is void ab initio.

After further deliberation. Justice Puno suggested that they go back to the original wording of the provision as follows:

The absolute nullity of a previous marriage may be invoked for purposes of remarriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41."[100] (Emphasis supplied.)

It is worth noting that Domingo is originally a petition for judicial declaration of a void marriage and separation of property filed by the wife against the husband to recover certain real and personal properties. The main issue therein is whether the petition for declaration of absolute nullity is necessary in order for the wife to recover her allegedly exclusive real and personal properties. Hence, the Court clarifies that the requirement under Article 40, i.e. final judgment declaring the previous marriage void, need not be obtained only for purposes of remarriage. The word "solely" qualifies the "final judgment declaring such previous marriage void" and not "for purposes of remarriage." [101]

In effect, the judicial declaration of absolute nullity may be invoked in other instances for purposes other than remarriage, such as in action for liquidation, partition, distribution, and separation of property, custody and support of common children and delivery of presumptive legitimes. Nonetheless, Domingo declares that other evidence, testimonial or documentary, may also prove the absolute nullity of the previous marriage in the said instances. Hence, such previous void marriage need not be proved solely by an earlier final judgment of court declaring it void. In other words, for purposes of remarriage, the only evidence to prove a void marriage is the final judgment declaring its absolute nullity. In other cases, the absolute nullity of a marriage may be proved by evidence other than such judicial declaration. Thus, when one so desires to enter into another marriage when his or her previous marriage is still subsisting, he is required by law to prove that the previous one is an absolute nullity.[102] In fact, the Family Code requires the parties to a marriage to declare in the application for a marriage license if they were previously married; and how, when and where the such previous marriage was dissolved and annulled.[103]

Domingo did not specifically include criminal prosecutions for bigamy in the enumeration of instances where the absolute nullity of a marriage may be proved by evidence other than the judicial declaration of its nullity. However, the enumeration in Domingo did not purport to be an exhaustive list. Moreover, the discussion in the minutes plainly shows that the Civil Law and Family Committees did not: intend to deprive the accused or defendant to raise the defense of the absolute nullity of a void ab initio marriage in the same criminal proceeding. The Joint Committees, In formulating Article 40, primarily aimed to ensure the validity of the subsequent marriage sought to be contracted by one of the parties by requiring him or her to first obtain a judicial declaration of absolute nullity of his or her previous marriage.

Moreover, as aptly pointed out by Justice Caguioa, the Court, reading together the provisions of the Civil Code and Article 40 of the Family Code, held in Niñal[104] and reiterated in Cariño v. Cariño[105] that a void ab initio marriage can be subject of a collateral attack even in a criminal case:

Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage. "A void marriage does not require a judicial decree to restore the parties to their original rights or to make the marriage void but though no sentence of avoidance be absolutely necessary, yet as well for the sake of good order of society as for the peace of mind of all concerned, it is expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction." "Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts." It is not like a voidable marriage which cannot be collaterally attacked except in direct proceeding instituted during the lifetime of the parties so that on the death of either, the marriage cannot be impeached, and is made good ab initio. But Article 40 of the Family Code expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage and such absolute nullity can be based only on a final judgment to that effect. For the same reason, the law makes either the action or defense for the declaration of absolute nullity of marriage imprescriptible. Corollarily, if the death of either party would extinguish the cause of action or the ground for defense, then the same cannot be considered imprescriptible.

However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the Family Code connotes that such final judgment need not be obtained only for purpose of remarriage.[106] (Emphasis supplied.)

Well-settled is the rule that an implied repeal is disfavored by the law.[107] A statute must be so construed as to harmonize all apparent conflicts, and give effect to all its provisions whenever possible.[108] Interpretare et concordare legibus est optimus interpretandi, i.e., every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence.[109] The purpose of Article 40 of the Family Code is not at all inconsistent nor irreconcilable with the criminal prosecutions for bigamy defined and penalized under Article 349 of the RPC. Neither does Article 40 explicitly or impliedly repeal Article 349 of the RPC.

Plainly, Article 40 of the Family Code does not categorically withhold from the accused the right to invoke the defense of a void ab initio marriage even without a judicial decree of absolute nullity in criminal prosecution for bigamy. To adopt a contrary stringent application would defy the principle that penal laws are strictly construed against the State and liberally in favor of the accused. Granted, the State has the right to preserve and protect the sanctity of marriage; this should not, however, be done at the expense of the presumption of innocence of the accused. What is penalized under Article 349 of the RPC is the act of contracting a subsequent marriage while the prior marriage was valid and subsisting. This simply connotes that this provision penalizes contracting of a voidable or valid marriage and not a void ab initio marriage.

Nothing in Article 40 mentions the effect thereof on the criminal liability of the accused in bigamy cases. It would indeed be unfair to withhold from the accused in a bigamy case the right and the opportunity to raise the defense of nullity of a void ab initio marriage when the law does not explicitly say so. Thus, to borrow Justice Caguioa's opinion, even with the enactment of Article 40, a void ab initio marriage remains a valid defense in bigamy, and a prior and separate judicial declaration of absolute nullity is not indispensable to establish the same.

We cannot simply disregard the effects of a void, ab initio marriage and penalize the accused, for bigamy despite the clear absence of a valid prior marriage on the mere speculation that this interpretation may be subject to abuse by those parties who deliberately and consciously enter into multiple marriages knowing them to be void and thereafter, evade prosecution on the pretext of a void ab initio marriage. It must be pointed out and emphasized that these deliberate acts are already penalized under Article 350 of the RPC which reads:

ART. 350. Marriage contracted against provisions of laws. – The penalty of prison correccional in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall contract, marriage knowing that the requirements of the law have not, been complied with or that the marriage is in disregard of a legal impediment.

If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation, or fraud, he shall be punished by the maximum period of the penalty provided, in the next preceding paragraph. (Emphasis supplied.)

Thus, the dilemma sought to be prevented as reflected in several cases is nothing more but a mere speculation and should not be considered sufficient ground to sustain the erroneous conclusion that to allow the accused to collaterally attack a void ab initio marriage in bigamy cases would render nugatory Article 349 of the RPC. To reiterate, Article 349 of the RPC penalizes parties who contracted a valid or voidable second marriage when the first marriage, which may be valid or voidable, is still subsisting. In contrast, Article 350 of the RPC penalizes those who without being included in Article 349, contract a marriage knowing that the requirements of the law have not been complied with or in disregard of a legal impediment.

Thus, an accused who contracts a void ab initio marriage may escape liability under Article 349 as it strictly encompasses valid or voidable first and second marriages. However, the accused in contracting a marriage knowing that the requirements of the law have not been complied with or in disregard of a legal impediment may be covered and penalized under Article 350 which addresses the predicament that to permit the accused to use the defense of a void ab initio marriage or to present a judicial declaration of nullity in criminal prosecution for bigamy would make a mockery of the sanctity of marriage by entering into multiple marriages knowing it to be void and thereafter escape punishment under Article 349.

Furthermore, it bears noting that in *Tenebro*,^[110] it was held that void ab initio marriages retroact to the date of the celebration of marriage but also produce legal effects and consequences^[111] as expressly provided under the statute such as on property relations, inheritance, donations, insurance beneficiary, legitimacy of children, custody of children, and support of common children. *Tenebro* included the incurring of criminal liability for bigamy as one of the legal effects and consequences despite the fact that there is no express mention thereof in the Family Code or, any statute. It is, thus, supercilious to hold that these legal effects and consequences include incurring criminal liability for bigamy without violating a fundamental principle in criminal law, that is, penal statutes are strictly construed against the State and in favor of the accused. To hold otherwise would amount to judicial legislation which is obviously proscribed.

Penal laws are strictly construed
against the State and liberally in
favor of the accused.

It is a time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused. Criminal law is rooted in the concept that there is no crime unless a law specifically calls for its punishment. Thus, courts must not bring cases within the provision of law that are not clearly embraced by it. The terms of the statute must clearly encompass the act committed by an accused for the latter to be held liable under

the provision. Any ambiguity in the law will always be construed strictly against the state and in favor of the accused.[112]

The fundamental principle in applying and in interpreting criminal laws is to resolve all doubts in favor of the accused. In *dubio pro reo*. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused shall be presumed innocent unless and until his guilt is established beyond reasonable doubt.[113] It is well-settled that the scope of a penal statute cannot be extended by good intention, implication, or even equity consideration.[114] Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered, within the statute's operation.[115]

When the Court is confronted with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him, the rule of lenity calls for the adoption of an interpretation which is more lenient to the accused.[116] In the instant case, to hold that a judicial declaration of absolute nullity is a necessity before an accused in criminal prosecution for bigamy may invoke his void *ab initio* marriage as a valid defense interprets Article 349 too liberally in favor of the State and too strictly against the accused, in violation of the rule of lenity and the rule on strict construction of penal laws. As quoted from the Dissent of Associate Justice Antonio T. Carpio in *Tenebro*:

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

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

The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislature, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment.[117] (Emphasis supplied.)

Nevertheless, we reiterate that the phrase "for purposes of remarriage" in Article 40 does not restrict the accused in a criminal case for bigamy, or parties in cases brought for purposes other than remarriage, from presenting a judicial declaration of nullity of their marriage in evidence. The framers of the Family Code included the qualifying phrase "for purposes of remarriage" in drafting Article 40 of the Family Code merely in recognition of the fact that there are actions other than for purposes of remarriage that are brought under the assumption that the marriage is valid, and to allow the defendants in the said actions to present evidence that the marriage is void to absolve themselves of liability.[118] Thus, the tenor of Article 40 of the Family Code is that for purposes of remarriage, the only legally acceptable basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes other than remarriage such as an action for liquidation, partition, distribution and separation of property between the erstwhile spouses, other evidence is also acceptable to prove the existence of grounds rendering such a previous marriage an absolute nullity.

Accordingly, Article 349 of the RPC and Article 40 of the Family Code should be harmonized and liberally construed towards the protection of the sanctity of marriage and the presumption of innocence of the accused.

With the retroactive effects of a void ab initio marriage, the marriage is considered non-existent from the time of the celebration of marriage. Therefore, to penalize and impose suffering on an individual on the basis of a non-existent marriage renders our penal laws sorely vindictive and resentful.

All told, we hold that in criminal prosecutions for bigamy, the accused can validly interpose the defense of a void ab initio marriage even without obtaining a judicial declaration of absolute nullity. Consequently, a judicial declaration of absolute nullity of the first and/or subsequent marriages obtained by the accused in a separate proceeding, irrespective of the time within which they are secured, is a valid defense in the criminal prosecution for bigamy.

Conclusion

Applying the foregoing, Pulido may validly raise the defense of a void ab initio marriage in the bigamy charge against him. In fact, he assails the validity of his marriage with Arcon on the absence of a valid marriage license as per the Certification dated December 8, 2008[119] issued by the Office of the Municipal Civil Registrar (Registrar) of Rosario, Cavite which states:

This is to certify that no marriage license # 7240107 issued on September 5, 1983 based on the availability of record book for marriage application found in this office.

This is to further certify that from the same available record book, an inclusion of name of certain Luisito Pulido and Nora Arcon as male and female, contracting party have applied for a marriage license on the date of August 8, 1983 under registry # 198 (1).

No corresponding entry on the date of issuance of marriage license and marriage license number respectively have appeared on the said record book, as noted.

However, no original document, of the Marriage License and Marriage Application of Luisito Pulido could be presented. Possibilities that the said documents were one of among unnumbered marriage application and marriage license that were eaten by termites.

x x x x (Emphasis supplied.)[120]

As can be gleaned from the foregoing, Pulido and Arcon applied for a marriage license on August 8, 1983 with Registry No. 198 (1). However, the Registrar noted that there was no record of entry of: (a) the date of issuance of a marriage license; and (b) the marriage license number in the record book for marriage application. The original documents of the marriage license and marriage application cannot be retrieved nor found in their custody. However, the Registrar states that these documents could possibly be among those unnumbered marriage application and marriage license that were destroyed due to termite infestation.

To note, the Registrar did not categorically declare that a marriage license was issued to Pulido and Arcon nor that it was issued but was destroyed due to termite infestation. It bears stressing that the Registrar found no entry of its date of issuance and license number in its record book, which will likely explain why the original document of the marriage license could not be found in its custody. With the absence of a valid marriage license, a reasonable doubt arises as to existence of a prior valid marriage, i.e. Pulido's first marriage with Arcon, which is one of the elements of bigamy

Verily, the marriage contract is the prima facie evidence of the facts stated therein.[121] "Prima facie is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish, a given fact, or the group or chain of facts constituting the party's claim or defense and which if not rebutted or contradicted, will remain sufficient." [122] However, while Pulido and Arcon's Marriage Contract[123] bears a marriage license number issued on September 5, 1983, there is doubt as to the fact of its existence and issuance as

per Certification dated December 8, 2008, which essentially affects the validity of their marriage. Thus, there exists a reasonable doubt whether indeed Pulido and Arcon had a marriage license when they entered into marriage on September 5, 1983.

More importantly, during the pendency of this case, a judicial declaration of absolute nullity of Pulido's marriage with Arcon due to the absence of a valid marriage license was issued and attained finality on May 11, 2016.[124] On June 29, 2016, the RTC issued a Decree of Absolute Nullity of Marriage[125] which effectively retroacts to the date of the celebration of Pulido and Arcon's marriage, i.e. on September 5, 1983. This connotes that Pulido and Arcon were never married under the eyes of the law.

Where the discrepancies in the evidence are such as to give rise to a reasonable doubt, the accused should be acquitted.[126] "[T]he overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his/[her] guilt." [127]

The quantum of evidence required in criminal cases is proof beyond reasonable doubt. Section 2 of Rule 133 of the 1997 Rules of Court provides that "[p]roof beyond reasonable doubt does not mean such degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind." To overcome the accused's constitutional presumption of innocence, the prosecution must prove that a crime was committed and that the accused is the person responsible.[128]

Lacking an essential element of the crime of bigamy, i.e., a prior valid marriage, as per Certification dated December 8, 2008 and the subsequent judicial declaration of nullity of Pulido and Arcon's marriage, the prosecution failed to prove that the crime of bigamy is committed. Therefore, the acquittal of Pulido from the bigamy charge is warranted.

Needless to say, as to the absolute nullity of his second marriage with Baleda, it was declared void ab initio because of being bigamous and not because it lacked any of the essential requisites of a marriage. Hence, petitioner cannot use the same as a defense in his prosecution for bigamy.

Summary:

To summarize and for future guidance, the parties are not required to obtain a judicial declaration of absolute nullity of a void ab initio first and subsequent marriages in order to raise it as a defense in a bigamy case. The same rule now applies to all marriages celebrated under the Civil Code and the Family Code. Article 40 of the Family Code did not amend Article 349 of the RPC, and thus, did not deny the accused the right to collaterally attack the validity of a void ab initio marriage in the criminal prosecution for bigamy.

However, if the first marriage is merely voidable, the accused cannot interpose an annulment decree as a defense in the criminal prosecution for bigamy since the voidable first marriage is considered valid and subsisting when the second marriage was contracted. The crime of bigamy, therefore, is consummated when the second marriage was celebrated during the subsistence of the voidable first marriage. The same rule applies if the second marriage is merely considered as voidable.

To our mind, it is time to abandon the earlier precedents and adopt a more liberal view that a void ab initio marriage can be used as a defense in bigamy even without a separate judicial declaration of absolute nullity. The accused may present testimonial or documentary evidence such as the judicial declaration of absolute nullity of the first and/or subsequent void ab initio marriages in the criminal prosecution for bigamy. The said view is more in accord with the retroactive effects of a void ab initio marriage, the purpose of and legislative intent behind Article 40 of the Family Code, and the rule on statutory construction of penal laws. Therefore, the absence of a

"prior valid marriage" and the subsequent judicial declaration of absolute nullity of his first marriage, Pulido is hereby acquitted from the crime of Bigamy charged against him.

WHEREFORE, the Petition for Review on Certiorari is hereby GRANTED. The March 17, 2015 Decision and August 18, 2015 Resolution of the Court of Appeals in CA-G.R. CR No. 33008 are hereby REVERSED and SET ASIDE. Petitioner Luisito G. Pulido is ACQUITTED.

Let entry of judgment be issued.

SO ORDERED.

Gesmundo C.J., Leonen, Carandang, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, and J. Lopez, JJ., concur.
Perlas-Bernabe, and Caguioa, JJ., please see concurring opinion.
Lazaro-Javier, J., see concurring opinion.

[1] Rollo, pp. 9-20.

[2] CA rollo, pp. 99-113; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. (now a retired Member of this Court) and Francisco P. Acosta.

[3] Id. at 139-140.

[4] Records, pp. 183-187; penned by Judge Bonifacio Sanz Maceda.

[5] Id. at 1.

[6] Id.

[7] Id. at 124.

[8] Id. at 125.

[9] Id. at 126.

[10] Id. at 120-123.

[11] Id. at 172-173.

[12] Id.

[13] Id. at 183-187.

[14] Id. at 187.

[15] CA rollo, pp. 99-113.

[16] Records, p. 124.

[17] 636 Phil. 25 (2010).

[18] CA rollo, p. 112.

[19] Rollo, pp. 74-80.

[20] Id. at 112.

[21] Id. at 115-116.

- [22] Id. at 91-98.
- [23] Manuel v. People, 512 Phil. 818, 833 (2005).
- [24] Id. citing CUELLO CALON, DERECHO PENAL REFORMADO, VOL. V, 627.
- [25] Vitangcol v. People, 778 Phil. 326, 334 (2016) citing Tenebro v. Court of Appeals, 467 Phil. 723, 738 (2004).
- [26] Montañez v. Cipriano, 697 Phil. 586, 596 (2012) citing Manuel v. People, supra note 23, at 833.
- [27] 95 Phil. 845 (1954).
- [28] 100 Phil. 1033 (1957).
- [29] Ty v. Court of Appeals, 399 Phil. 647, 658-659 (2000) citing People v. Mendoza, supra note 27 and People v. Aragon, supra note 28.
- [30] 144 Phil. 514 (1970).
- [31] 147 Phil. 269 (1971).
- [32] 168 Phil 1 (1977).
- [33] 207 Phil. 458 (1983).
- [34] 227 Phil. 457 (1986).
- [35] 229 Phil. 251 (1986).
- [36] 335 Phil. 511 (1997).
- [37] Ty v. Court of Appeals, supra note 29.
- [38] 62 Phil. 246 (1935).
- [39] 51 O.G. 4079, February 14, 1955.
- [40] Merced v. Diez, 109 Phil. 155 (1960).
- [41] Id. at 160.
- [42] 114 Phil. 428 (1962).
- [43] Id. at 430-431.
- [44] 130 Phil. 745 (1968).
- [45] 243 Phil. 584 (1988).
- [46] Landicho v. Relova, supra, at 749-750.
- [47] 160-A Phil. 669 (1975).
- [48] Id. at 671.
- [49] Landicho v. Relova, supra note 44.
- [50] Vitangcol v. People, supra note 25, at 341-342 citing Landicho v. Relova, id. at 750.

[51] 297 Phil. 642 (1993).

[52] Id. at 650-652 citing Minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees dated August 23, 1986, pp. 4-7.

[53] 312 Phil. 939 (1995).

[54] Jarillo v. People, supra note 17, at 26-27.

[55] Montañez v. Cipriano, supra note 26.

[56] Id. at 599-600.

[57] Domingo v. Court of Appeals, supra note 51.

[58] Id. at 652 citing A.V. SEMPIO-DIY, HANDBOOK OF THE FAMILY CODE OF THE PHILIPPINES 46 (1988).

[59] Id. at 654.

[60] 391 Phil. 809 (2000).

[61] Id. at 824.

[62] Id.

[63] 391 Phil. 648 (2000).

[64] Id. at 656-657.

[65] Id. at 655 citing Landicho v. Relova, supra, note 44.

[66] Id. at 656-657.

[67] 470 Phil. 420 (2004).

[68] Id. at 430.

[69] Jarillo v. People, supra note 17.

[70] Id. at 27.

[71] Montañez v. Cipriano, supra note 26.

[72] Id. at 598-599.

[73] 671 Phil. 825 (2011).

[74] Id. at 832-833

[75] 652 Phil. 151 (2010).

[76] Id. at 170.

[77] 714 Phil. 349 (2013).

[78] Id. at 359.

[79] Vitangcol v. People, supra note 25.

- [80] Id. at 341.
- [81] Id. at 342.
- [82] 466 Phil. 1013 (2004).
- [83] Id. at 1023.
- [84] Id. at 1023-1024.
- [85] 467 Phil. 723 (2004).
- [86] Id. at 742.
- [87] Jarillo v. People, 617 Phil. 45, 53-54 (2009).
- [88] Nollora, Jr. v. People, 672 Phil. 771 (2011).
- [89] Lasanas v. People, 736 Phil 735 (2014).
- [90] Abunado v. People, supra note 67, at 434, Concurring Opinion of Associate Justice Antonio T. Carpio citing Associate Justice Jose C. Vitug's Civil Law, Persons and Family Relations, Vol I, (2003 ed.)
- [91] Morigo v. People, supra note 82, at 1023.
- [92] 384 Phil. 661 (2000).
- [93] Id. at 674-675.
- [94] Id.
- [95] Suntay v. Cojuangco-Suntay, 360 Phil 932, 944 (1998).
- [96] 784 Phil. 667 (2016).
- [97] Id. 675 citing Eduardo P. Caguioa, Comments and Cases on Civil Law (Civil Code of the Philippines), Vol. 1, 1967 Third Edition, p. 154.
- [98] Niñal v. Bayadog, supra note 92, at 674.
- [99] Morigo v. People, supra note 82 at 1023.
- [100] Domingo v. Court of Appeals, supra note 51, at 649-652.
- [101] Id. at 653.
- [102] Id. at 653-654.
- [103] Id. at 655.
- [104] Niñal v. Bayadog, supra note 92.
- [105] 403 Phil. 861 (2001).
- [106] Niñal v. Bayadog, supra note 92, at 674-675.
- [107] People v. Antillon, 200 Phil. 144, 149 (1982).
- [108] Id.

- [109] Hagad v. Gozo-Dadole, 321 Phil. 604, 614 (1995).
- [110] Tenebro v. Court of Appeals, supra note 85.
- [111] Id. at 744.
- [112] People v. Sullano, 827 Phil 613, 625 (2018).
- [113] Intestate Estate of Vda. de Carungcong v. People, 626 Phil 177, 200 (2010).
- [114] Lim Lao v. Court of Appeals, 340 Phil. 679, 690 (1997)
- [115] People v. Garcia, 85 Phil. 651, 656 (1950) citing Statutory Construction, Crawford, pp. 460-462.
- [116] People v. Valdez, 774 Phil. 723, 747 (2015).
- [117] Tenebro v. Court of Appeals, supra note 85, at 762.
- [118] Domingo v. Court of Appeals, supra note 51, at 653.
- [119] Records, p. 175.
- [120] Id.

[121] 1997 RULES OF COURT, RULE 130, SEC. 44.

- [122] Calimag v. Heirs of Silvestra N. Macapaz, 786 Phil. 59, 72 (2016) citing Tan, Jr. v. Hosana, 780 Phil. 258, 271 (2016).
- [123] Records, p. 10.
- [124] Rollo, p. 112.
- [125] Id. at 115-116.
- [126] U.S. v. Jose, 1 Phil. 402, 404 (1902).
- [127] People v. Divina, 440 Phil. 72, 79 (2002) citing People v. Baulite, 419 Phil. 191, 198 (2001).
- [128] People v. Caranguian, 390 Phil. 519, 525-526 (2000).

C O N C U R R I N G O P I N I O N

PERLAS-BERNABE, J.:

I concur. Henceforth, contrary to previous rulings on the matter, persons should not anymore be convicted of the crime of Bigamy under Article 349 of the Revised Penal Code (RPC) if the prior and/or subsequent marriage^[1] is a nullity, regardless of the date (i.e., whether during the effectivity of the Civil Code or Family Code) of the marriage's celebration. As such, the nullity of the previous or subsequent marriage is a valid defense in every subsisting prosecution of the crime of Bigamy, which defense petitioner Luisito G. Pulido successfully proffered, and thus, warrants his acquittal.

To expound, the hornbook rule is that "[c]riminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general

purpose for which the statute was enacted. Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought." [2]

The letter of Article 349 of the RPC is as follows:

Article 349. Bigamy. – The penalty of prision mayor shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouses been declared presumptively dead by means of a judgment rendered in the proper proceedings. (Emphasis supplied)

In *Manuel v. People*, [3] the Court observed that the Bigamy provision of the RPC was substantially lifted from the *Codigo Penal* of Spain which states: "El que contrajere Segundo o ulterior matrimonio sin hallarse legítimamente disuelto el anterior, será castigado con la pena de prision mayor" [4] – or in English: "Anyone who contracts a second or subsequent marriage without the previous one being legitimately dissolved will be punished with the penalty of prision mayor." [5]

Conceptually, null and void marriages are void from the very beginning. In contrast to valid and/or voidable marriages (which produce legal effects prior to their annulment), null and void marriages are, by their very nature, legally inexistent and are considered to have not taken place. Case law explains:

"Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts." It is not like a voidable marriage which cannot be collaterally attacked except in direct proceeding instituted during the lifetime of the parties so that on the death of either, the marriage cannot be impeached, and is made good ab initio. [6] (Emphasis and underscoring supplied)

The very wording of Article 349 of the RPC which criminalizes Bigamy clearly requires the existence of a "former marriage [that] has [not] been legally dissolved." By its common acceptance, "to dissolve" is synonymous to "to terminate" or "to bring to an end." [7] Thus, as expressed by the letter of the provision itself, Article 349 never contemplated null and void marriages because there is nothing to dissolve in the first place.

A judicial declaration of nullity does not "legally dissolve" a null and void marriage, but merely confirms the status of the marriage as such. Furthermore, according to Eugenio Cuello Calon, a known scholar in criminal law, bigamy is penalized as a felony for purposes of preserving and ensuring the juridical tie of marriage established by law. [8] However, when it comes to null and void marriages, there is no juridical tie to preserve because, in the first place, the juridical tie does not legally exist.

The spirit of Article 349 of the RPC, as derived from its legislative context, further confirms that null and void marriages were never intended to be included in its coverage.

As earlier intimated, Article 349 of the RPC was patterned after the *Codigo Penal* version of Bigamy. At the time the *Codigo Penal* was enacted, the contemporaneous law governing marriages was the Spanish Civil Code of 1889 (Spanish Civil Code). Under the Spanish Civil Code, the dissolution of marriages may only be done either through annulment [9] or divorce. [10] Thus, insofar as the *Codigo Penal* version of Bigamy is concerned, the

element of "former marriage [that] has [not] been legally dissolved" must have only contemplated two (2) types of marriages, namely: (a) voidable marriages, which may be dissolved by annulment; and (b) valid marriages, which may be dissolved by divorce. Having only been patterned after the counterpart provision of the *Codigo Penal*, Article 349 of the RPC must likewise be only construed to equally pertain to the same coverage, i.e., voidable and valid marriages.

With the foregoing in mind, as well as following the statutory construction maxim of *in dubio pro reo*,^[11] the ponencia thus correctly rules that a person who enters into a null and void marriage, and thereafter, enters into another marriage, should not be convicted of the crime of Bigamy under Article 349 of the RPC as the latter law only covers situations where the person's previous marriage is either valid or voidable. In the same vein, a person who contracts a second or subsequent marriage which is null and void on the ground other than it being bigamous under civil law, shall also not incur criminal liability for Bigamy because the legal inexistence of the second or subsequent marriage would mean that "the element, 'that [the accused] contracts a second or subsequent marriage' is lacking."^[12] These novel interpretations are more consistent with the intent behind punishing Bigamy, i.e., the preservation of a juridical tie established by a valid marriage.

As a final point, it should be stressed that the passage of Article 40^[13] of the Family Code, which requires a judicial declaration of nullity, is only for purposes of remarriage. Hence, since remarriage is a civil law process, this later requirement (passed only in 1987) should not in any way affect the distinct realm of criminal law, much more constitute an implied repeal or amendment of Article 349 of the RPC.

However, I deem it apt to highlight that the Court's present interpretation of Article 349 of the RPC creates a legal incongruence between the criminal law and civil law treatments of Bigamy. On one hand, insofar as criminal law is concerned, a person who contracted a first marriage which is void *ab initio*, and thereafter, contracted a second marriage, cannot be held criminally liable for Bigamy; whereas, on the other hand, under the lens of the Family Code, the second marriage will be considered void *ab initio* for being bigamous for failure to comply with the requirement stated in Article 40 thereof.

Despite this disparity, it nonetheless remains that Article 349 of the RPC has not been amended since its passage in 1930; hence, the Court is constrained to interpret and apply the same as written and intended. It is well-settled that the criminalization of acts is a policy matter that belongs to the legislative branch of the government. Therefore, the solution to bridge this apparent gap in our laws is remedial legislation, which is left to the Congress' prerogative.

ACCORDINGLY, petitioner should be ACQUITTED.

[1] Except second marriages that are null and void for being bigamous under civil law. Article 35 (4) of the Family Code reads:

Article 35. The following marriages shall be void from the beginning:

x x x x

(4) Those bigamous or polygamous marriages not falling under Article 41;

x x x x.

[2] *People v. Garcia*, 85 Phil. 651, 656 (1950); emphases and underscoring supplied.

[3] 512 Phil. 818 (2005).

[4] See *id.* at 833.

[5] See <https://translate.google.com/?sl=auto&tl=en&text=El%20que%20contrajere%20Segundo%20o%20ulterior%20matrimonio%20sin%20hallarse%20leg%C3%83%C2%ADtimamente%20disuelto%20el%20anterior%2C%20ser%C3%83%C2%A1%20castigado%20con%20la%20pena%20de%20prision%20mayor&op=translate> last accessed on July 23, 2021.

[6] *Niñal v. Bayadog*, 384 Phil. 661, 674 (2000); citation omitted.

[7] See definition of "dissolve" at <https://www.merriam-webster.com/dictionary/dissolve> last accessed on July 23, 2021

[8] See *Manuel v. People*, *supra* at 833; citing Eugenio Cuello Calon, *Derecho Penal Reformado*, Vol. V, p. 627.

[9] See Articles 101 to 103 of the Spanish Civil Code of 1889.

[10] See Articles 104 to 107 of the Spanish Civil Code of 1889.

[11] "In dubio pro reo. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused shall be presumed innocent until and unless his guilt is established beyond reasonable doubt." (See *J. Corona's Separate Opinion in People v. Temporada*, 594 Phil. 680, 742 [2000].)

[12] Ponencia, p. 24.

[13] Article 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 previous marriage void.

CONCURRING OPINION

CAGUIOA, J.:

I agree with the acquittal of petitioner and the ponencia's ruling that, in criminal prosecutions for Bigamy, an accused can validly interpose the defense of a void marriage, even in the absence of a judicial declaration of absolute nullity.[1]

I write this opinion to highlight the need for the Court to abandon previous cases which ruled otherwise. A plain reading of Article 349 of the Revised Penal Code (RPC), which to date has not been amended or repealed by any law, supports the conclusion that the absolute nullity of a void *ab initio* marriage is a valid defense in an indictment for Bigamy, regardless of the existence of a separate judicial declaration nullifying said marriage. The absolute nullity of a void marriage may also be established and proven by the accused in the very criminal proceeding filed against him, through other evidence aside from a judicial decree declaring the marriage void *ab initio*.

As elaborated in the ponencia, the Court has taken differing positions with respect to the issue of whether the nullity of a marriage void *ab initio* is a valid defense in a prosecution for Bigamy.[2]

In the earlier cases of *People v. Mendoza*,[3] *People v. Aragon*,[4] *People v. Mora Dumpo*[5] and *People v. De Lara*,[6] the Court recognized that nullity of a void marriage is a valid defense and if proven during trial will exonerate an accused of the crime of Bigamy.

Mendoza and *Aragon* involved the nullity of the first marriage, whereas in *Mora Dumpo* and *De Lara* it was the

nullity of the subsequent marriage that was raised. In all these cases, the Court acquitted the accused ruling that the crime of Bigamy was not and could not have been committed because the respective prior or subsequent marriages were considered by law void ab initio.

In *Mendoza*, the Court explained that "[a] prosecution for bigamy based on said void marriage will not lie." [7] In *Aragon*, the Court, reiterating *Mendoza*, ruled that the absolute nullity of a previous marriage exonerates an accused of Bigamy and "no judicial decree is necessary to establish its invalidity, as distinguished from mere annulable marriages." [8]

In *Mora Dumpo* the Court held that, for Bigamy to arise, the alleged second or subsequent marriage must also be valid. It must have all the essential requisites of a valid marriage except for the existence of the first marriage. Otherwise, "there is no justification to hold [an accused] guilty of the crime [of Bigamy as] charged in the information." [9]

In *De Lara*, the Court acquitted the accused because it was established that the subsequent marriage was contracted without a marriage license. The Court explained that the second marriage could not even be considered a bigamous marriage as it was void ab initio on grounds other than the existence of the first marriage. [10]

In succeeding cases, however, the Court has taken a 180-degree turn. [11] The change in jurisprudence was impelled by the subsequent enactment of Article 40 of the Family Code.

Foremost is the case of *Mercado v. Tan*. [12] In *Mercado*, the Court did not give credence to the judicial declaration of nullity of the first marriage subsequently obtained by the accused during the pendency of the criminal case for Bigamy. According to the Court, by contracting a second marriage while the first marriage was subsisting, the accused committed the acts punishable under Article 349 of the RPC. That the accused subsequently obtained a judicial declaration of nullity of his first marriage was immaterial. The Court emphasized that Article 40 of the Family Code has effectively overturned the Court's ruling in *Mendoza* and *Aragon*. [13] Thus, "[a] judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies even if the earlier union is characterized by statutes as 'void.'" [14]

Similar to *Mercado*, the Court in *Marbella-Bobis v. Bobis* [15] found that the issue on the absolute nullity of the first marriage, pending in a civil case, is immaterial in the prosecution for Bigamy. The Court explained that in light of Article 40 of the Family Code, he who contracts a subsequent marriage before the judicial declaration of nullity of his first marriage assumes the risk of being prosecuted for bigamy and in such a case, the criminal case may not be suspended on the ground of the pendency of a civil case for declaration of nullity. [16] The Court further noted that to allow an accused to simply invoke the nullity of his first marriage is to render the provisions on bigamy nugatory, viz.:

In the case at bar, respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is to disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite — usually the marriage license — and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provisions on bigamy. x x x [17]

In another case, *Tenebro v. Court of Appeals*, [18] where the accused raised the nullity of his second marriage

based on a final and executory judgment, the Court still found the accused guilty of Bigamy. According to the Court, "the nullity of the second marriage is not per se an argument for the avoidance of criminal liability for bigamy. x x x Article 349 of the Revised Penal Code criminalizes x x x the mere act of contracting a second or a subsequent marriage during the subsistence of a valid marriage," regardless of whether the second or subsequent marriage is void ab initio.[19] Further, similar to Marbella-Bobis, the Court held in Tenebro that acquitting the accused "would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment." [20]

Applying the principle enunciated in Mercado, Marbella-Bobis and Tenebro, the Court consistently ruled in a catena of cases, which includes, among others, Jarillo v. People,[21] Antone v. Beronilla,[22] Teves v. People,[23] Montañez v. Cipriano,[24] and People v. Odtuhan,[25] that the subsequent declaration of nullity of the first marriage or second marriage is immaterial in the prosecution for Bigamy. The crime of Bigamy is committed once a person contracts a second marriage without first securing a judicial decree of nullity of his first marriage, even if the latter is considered by law void ab initio.

These succeeding cases, which were diametrically opposed to the earlier jurisprudence in the cases of Mendoza, et al., find no clear anchor on the plain language of Article 349 of the RPC and Article 40 of the Family Code. In fact, these cases unduly expanded the crime of Bigamy as defined and penalized by the RPC and the purpose for which Article 40 of the Family Code was enacted.

I expound.

The absolute nullity of a void marriage is a valid defense in Bigamy. Article 349 of the RPC applies only to valid or at least voidable and not void ab initio marriages. Other crimes not covered by Article 349 are punishable under Article 350 of the RPC.

When the statute speaks unequivocally, there is nothing for the courts to do but to apply it.[26] The plain, clear and unambiguous language of the law must be taken to mean exactly what it says and courts have no choice but to see to it that the mandate is obeyed.[27]

In this case, the Court is called upon to apply the clear and straightforward language of Article 349 of the RPC, which defines and penalizes the crime of Bigamy. Article 349 explicitly states that Bigamy is committed by "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." [28] Thus, to secure a conviction under Article 349, the following elements must all be established, beyond reasonable doubt:

- the offender has been legally married;
- the first marriage has not been legally dissolved, or in case his or her spouse is absent, the absent spouse has not been judicially declared presumptively dead;

- he contracts a subsequent marriage; and
- the subsequent marriage would have been valid had it not been for the existence of the first.[29]

Based from the foregoing, Bigamy is committed not by simply contracting multiple marriages regardless of their inherent defects. The gravamen of the offense, based on the plain language of the law, is the act of contracting two valid marriages.[30] It is essential therefore that the validity of the first and second marriages be sufficiently established before an accused may be convicted for Bigamy. Hence, the first element requires that the offender must be legally married and that such marriage was not legally dissolved when the offender contracted a second or subsequent marriage. That Article 349 intentionally used the term "legally dissolved"[31] presupposes that the first or former marriage must be valid or at least voidable and not void ab initio; because unlike a voidable marriage, which is considered by law valid from the beginning unless annulled or dissolved by the court, a marriage void ab initio does not need to be "legally dissolved"[32] as it is deemed to have not taken place at all.[33] The Court's ruling in *Suntay v. Cojuangco-Suntay*[34] lends credence:

The fundamental distinction between void and voidable marriages is that a void marriage is deemed never to have taken place at all. x x x.

On the other hand, a voidable marriage, is considered valid and produces all its civil effects, until it is set aside by final judgment of a competent court in an action for annulment. Juridically, the annulment of a marriage dissolves the special contract as if it had never been entered into but the law makes express provisions to prevent the effects of the marriage from being totally wiped out. x x x

x x x x

Indeed, the terms "annul" and "null and void" have different legal connotations and implications. Annul means to reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with whereas null and void is something that does not exist from the beginning. A marriage that is annulled presupposes that it subsists but later ceases to have legal effect when it is terminated through a court action. But in nullifying a marriage, the court simply declares a status or condition which already exists from the very beginning.[35] (Emphasis supplied; italics in the original)

The fourth element of Bigamy also requires that the second or subsequent marriage must be likewise valid and not void ab initio. It must have all the essential requisites of a valid marriage were it not only for the existence of the first or prior marriage.[36] To reiterate, under Article 349 of the RPC, Bigamy is committed by contracting two valid marriages. Hence, if the second marriage is void ab initio for grounds other than the subsistence of the first marriage (e.g., lack of a marriage license), then the crime of Bigamy also does not arise.

The nullity of a void ab initio marriage, whether pertaining to the first or subsequent marriage, is undoubtedly a valid defense in a prosecution for Bigamy because void marriages are not covered or penalized under Article 349 of the RPC. What Article 349 contemplates is a situation where a person, whose marriage is valid or at least voidable, contracts a second or subsequent valid marriage without securing first a judicial decree of annulment of his or her former marriage.

Conversely, when the first or prior marriage was annulled by a competent court before the subsequent marriage was celebrated or when the former marriage is void ab initio or when the second or subsequent marriage is void on grounds other than the existence of the first marriage, the crime of Bigamy is not committed. As such, the accused must be acquitted of Bigamy because his acts are not punishable under Article 349 of the RPC. The acquittal of an accused in these cases does not render the law on bigamy nugatory. On the contrary, the court, in fact, gives life to the law by obeying its mandate and applying it only in cases clearly embraced by it. It must be remembered that no act can be pronounced criminal which is not clearly made so by statute; so, too, no person

who is not clearly within the terms of a statute can be brought within them.[37]

In addition, the Court's quandary, in the previously discussed cases, of allowing individuals who make a mockery of the sanctity of marriage by deliberately contracting multiple void ab initio marriages to easily escape the consequences of their illegal acts is more apparent than real. The Court in these cases overlooked Article 350 of the RPC. As correctly pointed out in the ponencia, while these deliberate acts may not be covered under Article 349 of the RPC, they are nonetheless punishable under Article 350 of the RPC,[38] which provides:

ART. 350. Marriage contracted against provisions of laws. — The penalty of prisión correccional in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next proceeding article, shall contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment.

If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud, he shall be punished by the maximum period of the penalty provided in the next preceding paragraph. (Emphasis and italics supplied)

That Article 350 expressly penalizes the act of knowingly contracting marriage without the requirements of law or in disregard of a legal impediment – which essentially includes void ab initio marriages – reinforces the fact that Article 349 only applies to valid or at least voidable marriages. Stated differently, the act of knowingly contracting multiple void ab initio marriages is clearly a violation of Article 350, but not considered a crime of Bigamy under Article 349 of the RPC.

A separate judicial declaration is not indispensable in proving the defense of absolute nullity of a void marriage. The absolute nullity of a marriage may be determined by the court in the same criminal proceeding.

Having established that the nullity of a void ab initio marriage is a valid defense in Bigamy, the question now is this: Is a separate judicial decree of nullity necessary before an accused may raise such defense in a Bigamy case?

My answer is no. An accused may raise the nullity of his or her void marriage in the same criminal proceeding and the criminal court shall have jurisdiction to rule on the issue as it is determinative of the guilt or innocence of the accused.

As discussed, void and voidable marriages are not identical. Unlike valid or voidable marriage, a void ab initio marriage is inexistent and no judicial decree is necessary to establish its invalidity. The nullity of a void ab initio marriage may be attacked directly by filing an action attacking the validity thereof or collaterally in any proceeding where the issue of its validity is essential to the resolution of the case. The Court in a catena of cases has been very clear about this distinction.

In *Niñal v. Bayadog*[39] the Court clarified that:

x x x Voidable and void marriages are not identical. A marriage that is annulable is valid until otherwise declared by the court; whereas a marriage that is void ab initio is considered as having never to have taken place and cannot be the source of rights. The first can be generally ratified or confirmed by free cohabitation or prescription while the other can never be ratified. A voidable marriage cannot be assailed collaterally except in a direct proceeding while a void marriage can be attacked collaterally. x x x[40] (Emphasis supplied and italics in the original)

Similarly, in *De Castro v. Assidao-De Castro*,^[41] the Court held that "[t]he validity of a void marriage may be collaterally attacked x x x in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. However, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a marriage an absolute nullity."^[42] Again, in *Castillo v. De Leon-Castillo*,^[43] the Court reiterated that "being nonexistent, a void marriage can be collaterally attacked, while a voidable marriage cannot be collaterally attacked[.]"^[44]

Accordingly, a separate judicial decree of nullity is not necessary before an accused may raise the nullity of his marriage as a defense in a prosecution for Bigamy. An accused may raise the nullity of his void marriage in the same criminal proceeding by presenting testimonial and documentary evidence proving the nullity of his or her marriage, and the criminal court shall have jurisdiction to rule on the issue because its resolution will determine the guilt or innocence of the accused.

Moreover, to require a separate judicial declaration of nullity for void ab initio marriages would blur the distinction created by law between Article 349 and Article 350 of the RPC. To reiterate, Article 349 penalizes the act of contracting two valid marriages; while Article 350 covers acts of deliberately contracting void ab initio marriages. By requiring a separate judicial decree, instead of the same criminal court resolving the issue, the accused runs the risk of being found guilty of Article 349 on the basis solely of his failure to secure a separate judicial decree of nullity of his void marriage, when the acts he actually committed may have been punishable under Article 350.

In this regard, the Court in the earlier cases of *Mendoza* and *Aragon* rightly applied the plain language of Article 349 when it ruled that the absolute nullity of a prior marriage void ab initio is a valid defense in a criminal case for Bigamy and "no judicial decree is necessary to establish its invalidity, as distinguished from mere annulable marriages."^[45] Similarly, in the cases of *Mora Dumpo* and *De Lara*, the Court was correct in acquitting the accused of Bigamy because it was proven during trial that the second marriage was void ab initio on grounds other than the existence of the first marriage. In these cases, the Court correctly recognized that a void ab initio marriage is not covered by Article 349 of the RPC and a separate judicial declaration is not indispensable to prove its nullity.

However, as earlier discussed, in succeeding cases, the Court took a 180-degree turn where the Court completely disregarded the plain and clear language of Article 349 of the RPC and ruled that a prior judicial decree of nullity of marriage void ab initio is necessary before a person may subsequently marry; otherwise, he runs the risk of being held liable for Bigamy under Article 349 of the RPC. This pronouncement of the Court was generally premised on the erroneous assumption that Article 40 of the Family Code had effectively abandoned the rulings in *Mendoza*, *Aragon*, *Mora Dumpo* and *De Lara*. However, Article 40 of the Family Code did not in any way amend or repeal the elements of Bigamy, as defined and penalized under Article 349 of the RPC. Consequently, its enactment could not have overturned *Mendoza*, *Aragon*, *Mora Dumpo* and *De Lara*, where the Court simply applied the plain language of the penal code.

Article 40 of the Family Code
applies only for purposes of
remarriage.

First, there is no indication at all from the plain language of Article 40 that the elements of Bigamy were repealed or amended so as to include void ab initio marriages as among those penalized by Article 349 and no longer covered under Article 350 of the RPC. On the contrary, what is apparent is that the judicial declaration of nullity of a previous void marriage, as required under Article 40 of the Family Code, is of limited application – i.e., it is

only necessary for purposes of remarriage, viz.:

Article 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 previous marriage void. (Emphasis, italics and underscoring supplied)

Thus, as I see it, what Article 40 simply means is that if a person wants to contract a subsequent marriage and for that marriage to be recognized under the law as valid, he must first secure a judicial decree declaring the previous marriage void ab initio. Otherwise, the subsequent marriage is null and void.[46] The purpose therefore of a prior judicial decree of nullity, under Article 40, was only to establish the validity of the subsequent marriage, and not to hold one criminally liable for Bigamy for failure to secure the same.

Second, Article 40 of the Family Code does not totally prohibit a collateral attack against a void ab initio marriage.

In *Domingo v. Court of Appeals*,[47] the Court had the opportunity to interpret Article 40 of the Family Code. Parsed from the committee deliberations, the Court in *Domingo* clarified that a collateral attack against a void marriage may be permitted for purposes other than remarriage.

The Family Law Revision Committee and the Civil Code Revision Committee which drafted what is now the Family Code of the Philippines took the position that parties to a marriage should not be allowed to assume that their marriage is void even if such be the fact but must first secure a judicial declaration of the nullity of their marriage before they can be allowed to marry again. This is borne out by the following minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees where the present Article 40, then Art. 39, was discussed.

"B. Article 39. —

The absolute nullity of a marriage may be invoked only on the basis of a final judgment declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that the above provision should include not only void but also voidable marriages. He then suggested that the above provision be modified as follows:

The validity of a marriage may be invoked only ...

Justice Reyes (J.B.L. Reyes), however, proposed that they say:

The validity or invalidity of a marriage may be invoked only ...

On the other hand, Justice Puno suggested that they say:

The invalidity of a marriage may be invoked only ...

Justice Caguioa explained that his idea is that one cannot determine for himself whether or not his marriage is valid and that a court action is needed. Justice Puno accordingly proposed that the provision be modified to read:

The invalidity of a marriage may be invoked only on the basis of a final judgment annulling the marriage or declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that in annulment, there is no question. Justice Puno, however, pointed out that, even if it is a judgment of annulment, they still have to produce the judgment.

Justice Caguioa suggested that they say:

The invalidity of a marriage may be invoked only on the basis of a final judgment declaring the marriage invalid, except as provided in Article 41.

Justice Puno raised the question: When a marriage is declared invalid, does it include the annulment of a marriage and the declaration that the marriage is void? Justice Caguioa replied in the affirmative. Dean Gupit added that in some judgments, even if the marriage is annulled, it is declared void. Justice Puno suggested that this matter be made clear in the provision.

Prof. Baviera remarked that the original idea in the provision is to require first a judicial declaration of a void marriage and not annulable marriages, with which the other members concurred. Judge Diy added that annulable marriages are presumed valid until a direct action is filed to annul it, which the other members affirmed. Justice Puno remarked that if this is so, then the phrase 'absolute nullity' can stand since it might result in confusion if they change the phrase to 'invalidity' if what they are referring to in the provision is the declaration that the marriage is void.

Prof. Bautista commented that they will be doing away with collateral defense as well as collateral attack. Justice Caguioa explained that the idea in the provision is that there should be a final judgment declaring the marriage void and a party should not declare for himself whether or not the marriage is void, which the other members affirmed. Justice Caguioa added that they are, therefore, trying to avoid a collateral attack on that point. Prof. Bautista stated that there are actions which are brought on the assumption that the marriage is valid. He then asked: Are they depriving one of the right to raise the defense that he has no liability because the basis of the liability is void? Prof. Bautista added that they cannot say that there will be no judgment on the validity or invalidity of the marriage because it will be taken up in the same proceeding. It will not be a unilateral declaration that it is a void marriage. Justice Caguioa saw the point of Prof. Bautista and suggested that they limit the provision to remarriage. He then proposed that Article 39 be reworded as follows:

The absolute nullity of a marriage for purposes of remarriage may be invoked only on the basis of final judgment ...

Justice Puno suggested that the above be modified as follows:

The absolute nullity of a previous marriage may be invoked for purposes of establishing the validity of a subsequent marriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41.

Justice Puno later modified the above as follows:

For the purpose of establishing the validity of a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

Justice Caguioa commented that the above provision is too broad and will not solve the objection of Prof. Bautista. He proposed that they say:

For the purpose of entering into a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

Justice Caguioa explained that the idea in the above provision is that if one enters into a subsequent marriage without obtaining a final judgment declaring the nullity of a previous marriage, said subsequent marriage is void ab initio.

After further deliberation, Justice Puno suggested that they go back to the original wording of the provision as follows:

The absolute nullity of a previous marriage may be invoked for purposes of remarriage only on the basis of a

final judgment declaring such previous marriage void, except as provided in Article 41."

x x x x

That Article 40 as finally formulated included the significant clause denotes that such final judgment declaring the previous marriage void need not be obtained only for purposes of remarriage. Undoubtedly, one can conceive of other instances where a party might well invoke the absolute nullity of a previous marriage for purposes other than remarriage, such as in case of an action for liquidation, partition, distribution and separation of property between the erstwhile spouses, as well as an action for the custody and support of their common children and the delivery of the latters' presumptive legitimes. In such cases, evidence needs [to] be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void. x x x[48] (Citations omitted; emphasis and underscoring supplied; italics in the original)

It is apparent from the foregoing disquisition among Justice Puno, Justice Caguioa, and Prof. Bautista that Article 40 was not intended to repeal the rule that a void ab initio marriage is subject to a collateral attack. In fact, the framers recognized that there are actions where the absolute nullity of marriage may be raised as a defense to avoid liability and they would not want to deprive a person of his right to raise such defense, or a court of its jurisdiction to rule on the issue. Thus, the framers opted to limit Article 40 to remarriage only. Consequently, for purposes other than remarriage, where the absolute nullity of a void ab initio marriage is raised, the court may rule on such issue and the absolute nullity of a such void marriage may be proven by other evidence both testimonial and documentary.

In *Niñal v. Bayadog*,[49] the Court, reading together the provisions of the Civil Code and Article 40 of the Family Code, also recognized that a void ab initio marriage is subject to a collateral attack even in a criminal case, viz.:

Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage. "A void marriage does not require a judicial decree to restore the parties to their original rights or to make the marriage void but though no sentence of avoidance be absolutely necessary, yet as well for the sake of good order of society as for the peace of mind of all concerned, it is expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction." "Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts." It is not like a voidable marriage which cannot be collaterally attacked except in direct proceeding instituted during the lifetime of the parties so that on the death of either, the marriage cannot be impeached, and is made good ab initio. But Article 40 of the Family Code expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage and such absolute nullity can be based only on a final judgment to that effect. For the same reason, the law makes either the action or defense for the declaration of absolute nullity of marriage imprescriptible. Corollarily, if the death of either party would extinguish the cause of action or the ground for defense, then the same cannot be considered imprescriptible.

However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is

other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the Family Code connotes that such final judgment need not be obtained only for purpose of remarriage.[50] (Citations omitted; emphasis and underscoring supplied)

Again, in *Cariño v. Cariño*,[51] the Court, reiterating *Domingo* and *Niñal*, held:

Under Article 40 of the Family Code, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. Meaning, where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring the previous marriage void. However, for purposes other than remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to the determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even after the death of the parties thereto, and even in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. In such instances, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void.

x x x x

In *Domingo v. Court of Appeals*, however, the Court, construing Article 40 of the Family Code, clarified that a prior and separate declaration of nullity of a marriage is an all important condition precedent only for purposes of remarriage. That is, if a party who is previously married wishes to contract a second marriage, he or she has to obtain first a judicial decree declaring the first marriage void, before he or she could contract said second marriage, otherwise the second marriage would be void. The same rule applies even if the first marriage is patently void because the parties are not free to determine for themselves the validity or invalidity of their marriage. However, for purposes other than to remarry, like for filing a case for collection of sum of money anchored on a marriage claimed to be valid, no prior and separate judicial declaration of nullity is necessary. All that a party has to do is to present evidence, testimonial or documentary, that would prove that the marriage from which his or her rights flow is in fact valid. Thereupon, the court, if material to the determination of the issues before it, will rule on the status of the marriage involved and proceed to determine the rights of the parties in accordance with the applicable laws and jurisprudence. Thus, in *Niñal v. Bayadog*, the Court explained:

[T]he court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the Family Code connoted that such final judgment need not be obtained only for purpose of remarriage.[52] (Citations omitted; emphasis and underscoring supplied)

Based on the foregoing, Article 40 of the Family Code was clearly not intended to amend or repeal the crime of Bigamy as defined and penalized under Article 349 of the RPC. It was also not intended to totally prohibit a collateral attack against a void ab initio marriage. To reiterate, Article 40 applies only for purposes of remarriage, of establishing the validity of a subsequent marriage. Therefore, notwithstanding the enactment of Article 40, a void ab initio marriage remains to be a valid defense in a Bigamy case and a prior and separate judicial declaration of nullity is not indispensable to establish the same. An accused in the very same criminal proceeding may raise the nullity of his or her marriage as void ab initio and adduce testimonial and documentary evidence showing the existence of grounds proving said marriage to be a nullity.

In sum, I join the ponencia in abandoning previous jurisprudence where the Court completely disregarded the

nullity of a marriage void ab initio as a valid defense in a prosecution for Bigamy. These rulings were based on an oversight that Article 40 of the Family Code had modified or repealed Article 349 of the RPC. The clear text of the law and the deliberations thereof, however, are clear that Article 40 of the Family Code was enacted only for purposes of remarriage. It does not have any effect on the elements of the crime of Bigamy, as defined and penalized under Article 349 of the RPC.

On the other hand, the Court's ruling in the earlier cases of *Mendoza, et al.* — where the absolute nullity of a void marriage was recognized a valid defense in Bigamy and that a prior or separate judicial decree is not indispensable to prove the same — is not only in accord with the letter and intent of the law, it is also consistent with the time-honored principle that all penal laws must be liberally construed in favor of the accused.

For, it is a well-entrenched rule that penal laws are to be construed strictly against the State and liberally in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused. If the statute is ambiguous and admits of two reasonable but contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.

The purpose of strict construction is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition of forbidden acts.[53] (Emphasis and underscoring supplied)

In fine, I vote to grant the petition. Considering that petitioner's first marriage was proven as void ab initio, the crime of Bigamy was not committed because the first element of the offense is missing. Petitioner's acquittal is therefore in order.

[1] Ponencia, p. 21.

[2] *Id.* at 15-21.

[3] 95 Phil. 845 (1954).

[4] 100 Phil. 1033 (1957).

[5] 62 Phil. 246 (1935).

[6] No. 12583-R, February 14, 1955, 51 O.G. 4079.

[7] See Syllabus, *supra* note 3.

[8] *People v. Aragon*, *supra* note 4, at 1035.

[9] *Supra* note 5, at 248.

[10] *Supra* note 6.

[11] See *Mercado v. Tan*, G.R. No. 137110, August 1, 2000, 337 SCRA 122; *Marbella-Bobis v. Bobis*, G.R. No. 138509, July 31, 2000, 336 SCRA 747; *Tenebro v. Court of Appeals*, G.R. No. 150758, February 18, 2004, 423 SCRA 272; *Santiago v. People*, G.R. No. 200233, July 15, 2015, 763 SCRA 54; *Antone v. Beronilla*, G.R. No. 183824, December 8, 2010, 637 SCRA 615; *Abunado v. People*, G.R. No. 159218, March 30, 2004, 426 SCRA

562; Jarillo v. People, G.R. No. 164435, September 29, 2009, 601 SCRA 236.

[12] Id.

[13] See also Te v. Court of Appeals, G.R. No. 126746, November 29, 2000, 346 SCRA 327, 336.

[14] Mercado v. Tan, *supra* note 11, at 124.

[15] *Supra* note 11.

[16] Id. at 753-754.

[17] Id. at 753.

[18] *Supra* note 11.

[19] Id. at 282; italics in the original.

[20] Id. at 284.

[21] *Supra* note 11.

[22] Id.

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

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

[25] G.R. No. 191566, July 17, 2013, 701 SCRA 506.

[26] Tawang Multi-Purpose Cooperative v. La Trinidad Water District, G.R. No. 166471, March 22, 2011, 646 SCRA 21, 33.

[27] Abakada Guro Party List v. Ermita, G.R. Nos. 168056, 168207, 168461, 168463 & 168730, September 1, 2005, 469 SCRA 14, 122.

[28] Emphasis, italics and underscoring supplied.

[29] Morigo v. People, G.R. No. 145226, February 6, 2004, 422 SCRA 376, 382; See Associate Justice Antonio T. Carpio's Dissenting Opinion in Tenebro v. Court of Appeals, *supra* note 11, at 298.

[30] The second or subsequent marriage must have all the requisites of a valid marriage other than existence of the first marriage.

[31] Emphasis supplied.

[32] Italics supplied.

[33] Niñal v. Bayadog, G.R. No. 133778, March 14, 2000, 328 SCRA 122.

[34] G.R. No. 132524, December 29, 1998, 300 SCRA 760.

[35] Id. at 770-771.

[36] See People v. Mora Dumpo, *supra* note 5, at 248; Manuel v. People, G.R. No. 165842, November 29, 2005, 476 SCRA 461, 477.

[37] People v. Atop, G.R. Nos. 124303-05, February 10, 1998, 286 SCRA 157, 170-171.

[38] Ponencia, pp. 30-31.

[39] Supra note 33.

[40] Id. at 134.

[41] G.R. No. 160172, February 13, 2008, 545 SCRA 162.

[42] Id. at 169-170.

[43] G.R. No. 189607, April 18, 2016, 789 SCRA 503.

[44] Id. at 512, citing EDUARDO P. CAGUIOA, COMMENTS AND CASES ON CIVIL LAW (CIVIL CODE OF THE PHILIPPINES), Vol. I, p. 154 (Third Edition, 1967).

[45] People v. Aragon, supra note 4, at 1035, citing People v. Mendoza, supra note 3, at 847.

[46] See Article 53 of the Family Code.

Article 53. Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.

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

[48] Id. at 579-584.

[49] Supra note 33.

[50] Id. at 135-136.

[51] G.R. No. 132529, February 2, 2001, 351 SCRA 127.

[52] Id. at 131-139.

[53] People v. Sullano, G.R. No. 228373, March 12, 2018, 858 SCRA 274, 289.

CONCURRING OPINION

LAZARO-JAVIER, J.:

I humbly submit my views on the evolving jurisprudence on the first two elements of the crime of bigamy as defined and penalized in Article 349, of the Revised Penal Code.

Bigamy has been defined, as follows:

ARTICLE 349. Bigamy. — The penalty of prisión 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 elements of this crime are: (a) the offender has been legally married; (b) the 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 [Family Code]; (c) that he contracts a second or subsequent marriage; and (d) the second or subsequent marriage has all the essential requisites for validity.[1]

The first element of bigamy must be interpreted to allow an accused to prove

reasonable doubt as to its existence in the same criminal case for bigamy where he or she is being tried.

A. Elements of Bigamy

The first two elements of bigamy are: (a) the offender has been legally married; (b) the 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 [Family Code] For purposes of the present petition, they are the critical matters of substance we have to look into.

These first two elements of bigamy are derived from Article 349 which states in part "... 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."

B. Second Element of Bigamy – Legally Dissolved

What does legally dissolved mean? Dissolution is the act of bringing to an end.[2] Thus, "[u]nder contract law, dissolution is the cancellation or termination of a contract or other legal relationship by the parties. For example, dissolution of marriage." [3]

Dissolution is the result of any event or proceeding that terminates the marital bond – (i) a marriage ended by divorce obtained outside the Philippines where divorce is valid by the alien spouse,[4] (ii) nullified marriage due to the absence of the essential or formal elements of marriage,[5] or (iii) annulled marriage due to a defect in any of the essential requisites.[6]

The second element stresses the legal nature of the dissolution. This means that the dissolution should not only be factual but also "that which is according to law,"[7] "deriving authority from or founded on law" or "established by law." [8] Clearly, the second element of bigamy requires a legal act or proceeding that terminates the marriage and proves its termination.

Jurisprudence has it that a marriage ended by divorce or annulment should have been already legally ended before the second marriage was contracted. This timeline is important not only because it is mentioned in Article 349 but also because prior to the divorce or annulment, the married person has just no capacity to marry.

On the other hand, jurisprudence has vacillated with respect to null marriages. There are intertwined two issues:

- (i) How and in what proceeding does one prove a null marriage?
- (ii) Must the marriage be already nullified before the second marriage was contracted?

On the first issue, one school of thought equates a null marriage with a marriage ended by divorce or an annulled marriage. In the case of the last two, they require a direct proceeding for this purpose. For there is simply no remedy recognized in and by law whereby divorce or annulment is granted as a collateral issue in a proceeding principally involving another matter. This school of thought extends the rule to null marriages on account of Article 40, Family Code,[9] which states:

ARTICLE 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 previous marriage void. (n)

Another school of thought believes that a null marriage need not be proved by a judicial declaration of nullity of this marriage.[10] The null marriage may be declared as such in the same proceeding where such declaration is necessary to determine the principal issue, such as in a criminal proceeding for bigamy – the declaration being

merely for the purpose of determining the presence of the first two elements of this crime.

On the second issue, one school of thought holds that a null marriage ought already to be a legally determined fact prior to the celebration of the second marriage.[11] This means that the nullity cannot be proved during the trial of the bigamy case but must be shown by a judicial decree of nullity obtained elsewhere.

A variation of this school of thought believes that it does not matter that the judicial decree of nullity was obtained after the celebration of the second marriage or even after the institution of the criminal case for bigamy,[12] since its effect retroacts to the legally fictional beginning of time.

The opposing school of thought rejects altogether the idea that a judicial decree is the sole proof of a null marriage or that nullity cannot be proved in the same criminal case for bigamy. This school of thought champions the idea that (i) nullity can be established in the same criminal case for bigamy by evidence relevant to the claim of nullity, (ii) this nullity has the effect of proving that there was no valid marriage since the beginning of time, and (iii) thus it does not matter when the marriage is adjudged to be null whether before or after the second marriage was contracted.[13]

C. Justice Caguioa's Reflections

For his articulate and excellently argued reflections, the revered Justice Caguioa opines that a null marriage can be established in the same proceeding where the criminal case for bigamy is being tried. This means that a judicial declaration of nullity of marriage is not necessary to disprove elements one and two of bigamy. This supports the conclusion that on the basis of the meaning of Article 40 of the Family Code derived from both its text and original meaning - this judicial declaration is essential only for purposes of remarriage, not for defending oneself in a bigamy case.

D. My Reflections

The starting point in understanding the crime of bigamy, as in other crimes, is the basic rule of statutory construction that penal statutes are to be liberally construed in favor of the accused and that every reasonable doubt must then be resolved in favor of the accused. This means that:

.... the courts must not bring cases within the provision of a law that are not clearly embraced by it. In short, no act can be pronounced criminal unless it is clearly made so by statute prior to its commission (*nullum crimen, nulla poena, sine lege*). So, too, no person who is not clearly within the terms of a statute can be brought within them.[14]

The analytical tool refers to the words defining the crime and the elements of the crime inferred from these words. Hence, to determine one's liability for bigamy or any other crime, the acts and omissions attributed to the accused must be matched to the text of the penal law itself. The analysis must center on each of the elements of the crime. More, every element of the crime corresponding to its definition in the statute must be established beyond reasonable doubt.

I respectfully submit that our discourse here ought to focus on the first element of bigamy – the offender has been legally married; in other words, the prior marriage must be valid. This first element must be interpreted to allow an accused to prove reasonable doubt as to its existence in the same criminal case for bigamy where this accused is being tried.

Let me expound:

One. I agree that the text itself of Article 40 of the Family Code does not support the view that an accused charged with bigamy must prove the judicial declaration of nullity of the first marriage to be exculpated of this crime. It

expressly requires the judicial declaration only for the purpose of remarriage.

Should this requirement be extended to a criminal prosecution for bigamy? There is nothing in the text to support making such an inference.

The text does not say and others or including remarriage to signal that the requirement can be demanded in other unmentioned circumstances.

Indeed –

It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others.

The rule is expressed in the familiar maxim, *expressio unius est exclusio alterius*.

The rule of *expressio unius est exclusio alterius* is formulated in a number of ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. *Expressum facit cessare tacitum*. Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.^[15]

This ordinary and precise meaning of the text of Article 40 is bolstered by the two gentlemen's reference to the original intent of its framers behind this provision – which is to require the judicial declaration only for purposes of remarriage.

A further boost to this understanding of Article 40 is Article 53, Family Code, which declares a subsequent marriage void if it is celebrated without the judgment of absolute nullity of the prior marriage. Article 53 proves that Article 40 relates solely to the event of a remarriage, not to the crime of bigamy or a criminal case for this crime or any other crime for that matter.

Two. If at all, the requirement of a judicial declaration is found in the second element of bigamy – "the 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 [Family Code]," which is derived from Article 349's "... 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."

In the case of an absent spouse, Article 349 expressly requires a negative averment and proof of a court declaration of absence or presumptive death prior to the celebration of the subsequent marriage.

In other situations involving null marriages, what Article 349 expressly requires is a negative averment and proof of the legal dissolution of the prior marriage obtained before the celebration of the subsequent marriage.

Legal dissolution happens only when there is a formal declaration to that effect. That declaration can only be made by a court of law.

To be sure, legal dissolution will not occur if the declaration is done only collaterally, such as when the cause of the legal dissolution is raised as a defense to some action.

For example, a marriage is not legally dissolved when a court declares who the heirs of a deceased are even though the court declares the marriage to be void in the course of that action, as the declaration was made only to resolve the principal issue of determining the identities of the deceased's heirs.

To illustrate further, in a criminal case for bigamy, a court's declaration that the prior marriage is void does not mean that the prior marriage has been "legally dissolved." The declaration was made solely to resolve the

presence or absence of this element.

Hence, if we were to consider just the second element, an accused in a bigamy case, after the prosecution has proved the negative, i.e., that the prior marriage had not been legally dissolved, the burden of evidence shifts to the accused to prove that such legal dissolution had in truth taken place, the only evidence being the judicial declaration of a legal dissolution. Anything less will not prove a "legally dissolved" marriage.

To repeat, a marriage is not legally dissolved through a collateral declaration in a separate action that the marriage is void. This declaration may help in determining the principal issue, but this declaration will not cause the legal dissolution of the prior marriage.

Three. However, the second element is not the only consideration in deciding whether a judicial declaration is the only evidence an accused in a bigamy case can offer to disprove the prosecution's cause and obtain an acquittal.

Notably, there is also the first element – the offender has been legally married.

The first element means that the prior marriage is a valid marriage. As held in *Lasanas v. People*,^[16] citing *Tenebro v. Court of Appeals*,^[17] "[a] plain reading of [Article 349 of the Revised Penal Code], therefore, would indicate that the provision penalizes the mere act of contracting a second or subsequent marriage during the subsistence of a valid marriage."

Proof by the prosecution of the first element comes from the offer of the marriage certificate of the prior marriage. This is the *prima facie* evidence of the validity of this marriage. The burden of evidence shifts to the accused to disprove the validity of the marriage. The accused disproves the validity of the prior marriage by casting mere reasonable doubt thereon.

In practical terms, this means raising reasonable doubt on the absence of the formal or essential requisites or the presence of the other causes of a null marriage. Obviously, the reference must be to null marriages because annulable or voidable marriages or the fact of divorce for that matter presupposes the validity of the marriages until legally dissolved – absent a legal dissolution, the marriage remains valid and binding. On the other hand, a null marriage is void from the beginning of time.

The best evidence to prove the invalidity of the prior marriage is a judicial declaration of this marriage's nullity. But short of this best evidence, an accused in a bigamy case has the constitutional right to cast reasonable doubt on the prosecution evidence on the first element in the same criminal case the accused is being tried.

In criminal cases, the burden is upon the prosecution to prove every element of the crime charged beyond a reasonable doubt. The failure to do so even on a single element entitles the accused to an acquittal.

It is contrary to the Constitution to require an accused to disprove the first element of bigamy only by presenting a judicial declaration of the prior marriage's nullity. This is because the burden of an accused to achieve such result is just to cast reasonable doubt on the first element of this crime.

What is meant by proof beyond a reasonable doubt? Rule 133 of the Rules of Court defines this standard of proof:

SECTION 2. Proof Beyond Reasonable Doubt. — In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

In practice, there is proof beyond a reasonable doubt where the judge can conclude: "All the above, as established during trial, lead to no other conclusion than the commission of the crime as prescribed in the law."^[18] It

involves asking these questions and getting answers to these questions:

- From the prosecution evidence that the judge accepts, must the presence of each of the elements of the crime charged and therefore the conviction of the accused inevitably and logically follow as a matter of course?
- Or, is there any other rational or reasonable explanation for the evidence that I accept than the presence of each of the elements of the crime charged or the accused's conviction for such crime?
- Or, is there a doubt as to the existence of any of the elements of the crime charged that can be reasonably explained on account or on the basis of the evidence or lack of evidence of the Prosecution?

A judicial declaration is not the only means to disprove the first element. Admittedly though, it is the best evidence of the fact contrary to the first element. But a doubt provided it is reasonable is enough. In the words of a foreign case law:

I am in full agreement with the following conclusion of Wood J.A. (at p. 525):

With respect to those of a contrary view, it is difficult to think of a more accurate statement than that which defines reasonable doubt as a doubt for which one can give a reason, so long as the reason given is logically connected to the evidence. An inability to give such a reason for the doubt one entertains is the first and most obvious indication that the doubt held may not be reasonable. In this respect, I agree with the United States Court of Appeals, District of Columbia Circuit, in *U.S. v. Dale*, 991 F.2d 819 (1993) at p.853: "The instruction ... fairly convey[s] that the requisite doubt must be 'based on reason' as distinguished from fancy, whim or conjecture."

In the end, while recognizing that the perfect charge was unattainable, Wood J.A. none the less approved as a "constitution-ally sufficient definition of reasonable doubt" ordinarily sufficient to explain the standard of proof to juries, British Columbia Supreme Court Justice Murray's standard form of jury instructions (at pp. 541-2):

You will note that the Crown must establish the accused's guilt beyond a "reasonable doubt", not beyond "any doubt". A reasonable doubt is exactly what it says -a doubt based on reason- on the logical processes of the mind. It is not a fanciful or speculative doubt, nor is it a doubt based upon sympathy or prejudice. It is the sort of doubt which, if you ask yourself "why do I doubt?"-you can assign a logical reason by way of an answer.

A logical reason in this context means a reason connected either to the evidence itself, including any conflict you may find exists after considering the evidence as a whole, or to an absence of evidence which in the circumstances of this case you believe is essential to a conviction.

.....

You must not base your doubt on the proposition that nothing is certain or impossible or that anything is possible. You are not entitled to set up a standard of absolute certainty and to say that the evidence does not measure up to that standard. In many things it is impossible to prove absolute certainty.[19]

Four. Applying these principles here, petitioner should be acquitted because the prior marriage has been shown to be a nullity, contrary to the first element of bigamy. The evidence on this is a judgment declaring the nullity of the prior marriage. This is the best evidence to prove the failure of the prosecution to prove the first element beyond a reasonable doubt. Any other relevant and admissible evidence offered in the same criminal proceeding for bigamy would have also disestablished the prosecution's claim of the validity of the prior marriage.

It also does not matter that the judgment came only after the celebration of the subsequent bigamous marriage and during the pendency of the present criminal case. For the cause of the invalidity of the prior marriage is one that makes it void from the beginning of time. Its nullity retroacts to that point in time and thus establishes the absence

of a subsisting valid marriage.

E. Conclusion

It appears surreal to me that the discussion on bigamy has taken a life of its own quite unlike the standard analysis in criminal cases. Instead of examining each of the elements of this crime, as defined in Article 349, the discourse from the past till today has focused on the impact of Article 40 of the Family Code.

To be sure, Article 40, as ably argued by Justice Caguioa, is not and has never been dispositive of this issue in the prosecution of bigamy cases. The history, original intent, text and related provision of Article 40 point to its relevance only for the purpose of remarriage.

However, the second element of bigamy, as supported by the clear wording of Article 349, requires a negative averment and proof of the legal dissolution of the prior marriage or the judgment of presumptive death or absence in the case of absentees. Thus, to disprove the second element, an accused would be hard-pressed to produce that legal dissolution which would only mean the court judgment or decree of dissolution. This is because legal dissolution cannot take place by means of a mere collateral declaration.

Nonetheless, the first element of bigamy requires the validity of the prior marriage. In disestablishing this first element, an accused may adduce in the same criminal case for bigamy evidence that would cast reasonable doubt on its existence. The evidence need not be a judicial declaration though this is indeed the best evidence. It could be any relevant and admissible evidence proving any of the causes of a null marriage. This is a constitutional right of an accused owing to the standard of proof in criminal cases, the burden of the prosecution to discharge this standard of proof, and the corollary presumption of innocence in favor of the accused. This right cannot be taken away from an accused such as when this Court has interpreted Article 40 the way it has.

A last point. Much has been said about the difference between the Article 349 and Article 350 of The Revised Penal Code. These penal provisions each state:

Article 349

Article 350

ARTICLE 349. Bigamy. — The penalty of *prisión 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.

ARTICLE 350. Marriage Contracted Against Provisions of Laws. — The penalty of *prisión correccional* in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment.

If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud, he shall be punished by the maximum period of the penalty provided in the next preceding paragraph.

I respectfully submit that the glaring difference between them is the presence of at least two successive marriages in Article 349, which would not be the situation in Article 350.

While both would involve at least one defective marriage, Article 349 entails more than one marriage.

Thus, a person who marries another without first obtaining a judicial declaration of nullity of that person's prior marriage would potentially be captured by both Articles 349 and 350.

However, it is the prosecution's lookout if the person could prove the invalidity of the prior marriage on causes attributable to null marriages, contrary to the first element of bigamy.

On the other hand, a prosecution under Article 350 will not have to deal with such complications because the knowing non-compliance with the legal requirements when the person contracts the subsequent marriage would be enough to find them[20] guilty.

Respectfully submitted.

[1] Sarto v. People, 826 Phil. 745 (2018).

[2] US Legal, US Legal.com at <https://definitions.uslegal.com/d/dissolution/> (last accessed July 2, 2021).

[3] Id.

[4] Sarto v. People, supra note 1.

[5] See e.g., Family Code, Articles 4, 35-38, 41, 40 in relation to 53.

[6] Id., Articles 4, 45.

[7] The Free Dictionary by Farlex at <https://legal-dictionary.thefreedictionary.com/legal> (last accessed on July 2, 2021).

[8] Merriam-Webster at <https://www.merriam-webster.com/dictionary/legal> (last accessed on July 2, 2021).

[9] See e.g., Vitangcol v. People, 778 Phil. 326 (2016).

[10] See e.g., Castillo v. De Leon Castillo, 784 Phil 667 (2016); People v. Aragon, 100 Phil. 1033 (1957).

[11] See e.g., Vitangcol v. People, supra note 9.

[12] See e.g., the ponencia.

[13] See e.g., People v. Mendoza, 95 Phil. 845 (1954).

[14] Causing v. Commission on Elections, 742 Phil. 539 (2014).

[15] Malinias v. Commission on Elections, 439 Phil. 326, 335 (2002).

[16] 736 Phil. 734 (2014).

[17] 467 Phil. 723 (2004).

[18] 761 Phil. 356 (2015).

[19] R. v. Lifchus, 1996 CanLII 6631 (MB CA), < <http://canlii.ca/t/1npkc> >. last accessed on July 2, 2021.

[20] I purposely used "them" to reflect gender neutrality and be inclusive of all forms of gender association or non-association or different associations, i.e., male, female undetermined, unaffiliated, ungended.

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