

## THIRD DIVISION

[ G.R. No. 137110, August 01, 2000 ]

**VINCENT PAUL G. MERCADO A.K.A. VINCENT G. MERCADO,  
PETITIONER, VS. CONSUELO TAN, RESPONDENT.**

### D E C I S I O N

**PANGANIBAN, J.:**

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 statute as "void."

#### The Case

Before us is a Petition for Review on Certiorari assailing the July 14, 1998 Decision of the Court of Appeals (CA)<sup>[1]</sup> in CA-GR CR No. 19830 and its January 4, 1999 Resolution denying reconsideration. The assailed Decision affirmed the ruling of the Regional Trial Court (RTC) of Bacolod City in Criminal Case No. 13848, which convicted herein petitioner of bigamy as follows:

"WHEREFORE, finding the guilt of accused Dr. Vincent Paul G. Mercado a.k.a. Dr. Vincent G. Mercado of the crime of Bigamy punishable under Article 349 of the Revised Penal Code to have been proven beyond reasonable doubt, [the court hereby renders] judgment imposing upon him a prison term of three (3) years, four (4) months and fifteen (15) days of prision correccional, as minimum of his indeterminate sentence, to eight (8) years and twenty-one (21) days of prision mayor, as maximum, plus accessory penalties provided by law.

Costs against accused."<sup>[2]</sup>

#### The Facts

The facts are quoted by Court of Appeals (CA) from the trial court's judgment, as follows:

"From the evidence adduced by the parties, there is no dispute that accused Dr. Vincent Mercado and complainant Ma. Consuelo Tan got married on June 27, 1991 before MTCC-Bacolod City Br. 7 Judge Gorgonio J. Ibañez [by reason of] which a Marriage Contract was duly executed and signed by the parties. As entered in said document, the status of accused was 'single'. There is no dispute either that at the time of the celebration of the wedding with complainant, accused was actually a married man, having been in lawful wedlock with Ma. Thelma Oliva in a marriage ceremony solemnized on April 10, 1976 by Judge Leonardo B. Cañares, CFI-Br. XIV, Cebu City per Marriage Certificate issued in

connection therewith, which matrimony was further blessed by Rev. Father Arthur Baur on October 10, 1976 in religious rites at the Sacred Heart Church, Cebu City. In the same manner, the civil marriage between accused and complainant was confirmed in a church ceremony on June 29, 1991 officiated by Msgr. Victorino A. Rivas, Judicial Vicar, Diocese of Bacolod City. Both marriages were consummated when out of the first consortium, Ma. Thelma Oliva bore accused two children, while a child, Vincent Paul, Jr. was sired by accused with complainant Ma. Consuelo Tan.

"On October 5, 1992, a letter-complaint for bigamy was filed by complainant through counsel with the City Prosecutor of Bacolod City, which eventually resulted [in] the institution of the present case before this Court against said accused, Dr. Vincent G. Mercado, on March 1, 1993 in an Information dated January 22, 1993.

"On November 13, 1992, or more than a month after the bigamy case was lodged in the Prosecutor's Office, accused filed an action for Declaration of Nullity of Marriage against Ma. Thelma V. Oliva in RTC-Br. 22, Cebu City, and in a Decision dated May 6, 1993 the marriage between Vincent G. Mercado and Ma. Thelma V. Oliva was declared null and void.

"Accused is charged [with] bigamy under Article 349 of the Revised Penal Code for having contracted a second marriage with herein complainant Ma. Consuelo Tan on June 27, 1991 when at that time he was previously united in lawful marriage with Ma. Thelma V. Oliva on April 10, 1976 at Cebu City, without said first marriage having been legally dissolved. As shown by the evidence and admitted by accused, all the essential elements of the crime are present, namely: (a) that the offender has been previously legally married; (2) that the first marriage has not been legally dissolved or in case the spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (3) that he contract[ed] a second or subsequent marriage; and (4) that the second or subsequent marriage ha[d] all the essential requisites for validity. x x x

"While acknowledging the existence of the two marriage[s], accused posited the defense that his previous marriage ha[d] been judicially declared null and void and that the private complainant had knowledge of the first marriage of accused.

"It is an admitted fact that when the second marriage was entered into with Ma. Consuelo Tan on June 27, 1991, accused's prior marriage with Ma. Thelma V. Oliva was subsisting, no judicial action having yet been initiated or any judicial declaration obtained as to the nullity of such prior marriage with Ma. Thelma V. Oliva. Since no declaration of the nullity of his first marriage ha[d] yet been made at the time of his second marriage, it is clear that accused was a married man when he contracted such second marriage with complainant on June 27, 1991. He was still at the time validly married to his first wife."<sup>[3]</sup>

### **Ruling of the Court of Appeals**

Agreeing with the lower court, the Court of Appeals stated:

"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.' But here, the final judgment declaring null and void accused's previous marriage came not before the celebration of the second marriage, but after, when the case for bigamy against accused was already tried in court. And what constitutes the crime of bigamy is the act of any person who shall contract a second subsequent marriage 'before' the former marriage has been legally dissolved."<sup>[4]</sup>

Hence, this Petition.<sup>[5]</sup>

### **The Issues**

In his Memorandum, petitioner raises the following issues:

"A

Whether or not the element of previous legal marriage is present in order to convict petitioner.

"B

Whether or not a liberal interpretation in favor of petitioner of Article 349 of the Revised Penal Code punishing bigamy, in relation to Articles 36 and 40 of the Family Code, negates the guilt of petitioner.

"C

Whether or not petitioner is entitled to an acquittal on the basis of reasonable doubt."<sup>[6]</sup>

### **The Court's Ruling**

The Petition is not meritorious.

#### **Main Issue:**

#### **Effect of Nullity of Previous Marriage**

Petitioner was convicted of bigamy under Article 349 of the Revised Penal Code, which provides:

"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 elements of this crime are as follows:

- "1. That the offender has been legally married;
2. That 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 Civil Code;

3. That he contracts a second or subsequent marriage;

4. That the second or subsequent marriage has all the essential requisites for validity.”<sup>[7]</sup>

When the Information was filed on January 22, 1993, all the elements of bigamy were present. It is undisputed that petitioner married Thelma G. Oliva on April 10, 1976 in Cebu City. While that marriage was still subsisting, he contracted a second marriage, this time with Respondent Ma. Consuelo Tan who subsequently filed the Complaint for bigamy.

Petitioner contends, however, that he obtained a judicial declaration of nullity of his first marriage under Article 36 of the Family Code, thereby rendering it void *ab initio*. Unlike voidable marriages which are considered valid until set aside by a competent court, he argues that a void marriage is deemed never to have taken place at all.<sup>[8]</sup> Thus, he concludes that there is no first marriage to speak of. Petitioner also quotes the commentaries<sup>[9]</sup> of former Justice Luis Reyes that “it is now settled that if the first marriage is void from the beginning, it is a defense in a bigamy charge. But if the first marriage is voidable, it is not a defense.”

Respondent, on the other hand, admits that the first marriage was declared null and void under Article 36 of the Family Code, but she points out that that declaration came only *after* the Information had been filed. Hence, by then, the crime had already been consummated. She argues that a judicial declaration of nullity of a void previous marriage must be obtained before a person can marry for a subsequent time.

We agree with the respondent.

To be sure, jurisprudence regarding the need for a judicial declaration of nullity of the previous marriage has been characterized as “conflicting.”<sup>[10]</sup> In *People v. Mendoza*,<sup>[11]</sup> a bigamy case involving an accused who married three times, the Court ruled that there was no need for such declaration. In that case, the accused contracted a second marriage during the subsistence of the first. When the first wife died, he married for the third time. The second wife then charged him with bigamy. Acquitting him, the Court held that the second marriage was void *ab initio* because it had been contracted while the first marriage was still in effect. Since the second marriage was obviously void and illegal, the Court ruled that there was no need for a judicial declaration of its nullity. Hence, the accused did not commit bigamy when he married for the third time. This ruling was affirmed by the Court in *People v. Aragon*,<sup>[12]</sup> which involved substantially the same facts.

But in subsequent cases, the Court impressed the need for a judicial declaration of nullity. In *Vda de Consuegra v. GSIS*,<sup>[13]</sup> Jose Consuegra married for the second time while the first marriage was still subsisting. Upon his death, the Court awarded one half of the proceeds of his retirement benefits to the first wife and the other half to the second wife and her children, notwithstanding the manifest nullity of the second marriage. It held: “And with respect to the right of the second wife, this Court observes that although the second marriage can be presumed to be void *ab initio* as it was celebrated while the first marriage was still subsisting, *still there is need for judicial declaration of such nullity.*”

In *Tolentino v. Paras*,<sup>[14]</sup> however, the Court again held that judicial declaration of nullity of a void marriage was not necessary. In that case, a man married twice. In his Death Certificate, his second wife was named as his surviving spouse. The first wife then filed a Petition to correct the said entry in the Death Certificate. The Court ruled in favor of the first wife, holding that "the second marriage that he contracted with private respondent during the lifetime of the first spouse is null and void from the beginning and of no force and effect. *No judicial decree is necessary to establish the invalidity of a void marriage.*"

In *Wiegel v. Sempio-Diy*,<sup>[15]</sup> the Court stressed the need for such declaration. In that case, Karl Heinz Wiegel filed an action for the declaration of nullity of his marriage to Lilia Olivia Wiegel on the ground that the latter had a prior existing marriage. After pretrial, Lilia asked that she be allowed to present evidence to prove, among others, that her first husband had previously been married to another woman. In holding that there was no need for such evidence, the Court ruled: "x x x There is likewise no need of introducing evidence about the existing prior marriage of her first husband at the time they married each other, *for then such a marriage though void still needs, according to this Court, a judicial declaration of such fact* and for all legal intents and purposes she would still be regarded as a married woman at the time she contracted her marriage with respondent Karl Heinz Wiegel; x x x."

Subsequently, in *Yap v. CA*,<sup>[16]</sup> the Court reverted to the ruling in *People v. Mendoza*, holding that there was no need for such declaration of nullity.

In *Domingo v. CA*,<sup>[17]</sup> the issue raised was whether a judicial declaration of nullity was still necessary for the recovery and the separation of properties of erstwhile spouses. Ruling in the affirmative, the Court declared: "The Family Code has settled once and for all the conflicting jurisprudence on the matter. *A declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense*; in fact, the 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."<sup>[18]</sup>

Unlike *Mendoza and Aragon*, *Domingo* as well as the other cases herein cited was not a criminal prosecution for bigamy. Nonetheless, *Domingo* underscored the need for a judicial declaration of nullity of a void marriage on the basis of a new provision of the Family Code, which came into effect several years after the promulgation of *Mendoza and Aragon*.

In *Mendoza and Aragon*, the Court relied on Section 29 of Act No. 3613 (Marriage Law), which provided:

"*Illegal marriages.* — Any marriage subsequently contracted by any person during the lifetime of the first spouse shall be illegal and void from its performance, unless:

(a) The first marriage was annulled or dissolved;

(b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse