

FIRST DIVISION

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

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

D E C I S I O N

PEREZ, J.:

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

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

The Antecedents

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

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

Pending the setting of the case for arraignment, herein respondent moved to quash the Information on the ground that *the facts charged do not constitute an offense*.^[6] He informed the court that his marriage with petitioner was declared null and void by the Regional Trial Court, Branch 16, Naval, Biliran on 26 April 2007;^[7] that the decision became final and executory on 15 May 200^[7]; ^[8] and that such decree has already been registered with the Municipal Civil Registrar on 12 June 2007.^[9] He argued that since the marriage had been declared null and void from the beginning, there was actually no first marriage to speak of. Absent a first valid marriage, the facts alleged in the Information do not constitute the crime of bigamy.

[10]

In its comment/opposition to the motion,^[11] the prosecution, through herein petitioner, maintained that the respondent committed an act which has all the essential requisites of bigamy. The prosecution pointed out that the marriage of petitioner and respondent on 18 November 1978 has not yet been severed when he contracted a second marriage on 16 February 1991, for which reason, bigamy has already been committed before the court declared the first marriage null and void on 27 April 2007.^[12] The prosecution also invoked the rulings of the Supreme Court holding that a motion to quash is a hypothetical admission of the facts alleged in the information, and that facts contrary thereto are matters of defense which may be raised only during the presentation of evidence.^[13]

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

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

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

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

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

In the interim, in a Petition for Relief from Judgment^[22] before the Regional Trial Court of Naval, Biliran, petitioner questioned the validity of the proceedings in the

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

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

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

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

1. The verification is defective as it does not include the assurance that the allegations in the petition are based on authentic records.
2. Since the petition assails the trial court's dismissal of the criminal information for bigamy filed against private respondent Leo Beronilla, the petition, if at all warranted, should be filed in behalf of the People of the Philippines by the Office of the Solicitor General, being its statutory counsel in all appealed criminal cases.
3. There is a violation of the rule on double jeopardy as the dismissal of the subject criminal case is tantamount to an acquittal based on the trial court's finding that the first essential element of bigamy, which is a first valid marriage contracted by private respondent is wanting. There is no clear showing in the petition that the dismissal was tainted with arbitrariness which violated petitioner's right to due process. Notably, petitioner filed her comment/opposition to private respondent's motion to quash before the trial court issued its Order dated September 20, 2007 dismissing the information. Hence, if there is no denial of due process, there can be no grave abuse of discretion that would merit the application of the exception to the double jeopardy rule. ^[28]

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

Hence, this petition.^[30]

Our Ruling

I

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

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

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

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

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

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

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

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

Thus, in *Republic v. Partisala*,^[37] we held that the summary dismissal of an action in the name of the Republic of the Philippines, when not initiated by the Solicitor

General, is in order.^[38] Not even the appearance of the conformity of the public prosecutor in a petition for *certiorari* would suffice because the authority of the City Prosecutor or his assistant to represent the People of the Philippines is limited to the proceedings in the trial court.^[39]

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

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

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

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

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

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

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