

SECOND DIVISION

[G.R. No. 145226, February 06, 2004]

**LUCIO MORIGO Y CACHO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

QUISUMBING, J.:

This petition for review on certiorari seeks to reverse the decision^[1] dated October 21, 1999 of the Court of Appeals in CA-G.R. CR No. 20700, which affirmed the judgment^[2] dated August 5, 1996 of the Regional Trial Court (RTC) of Bohol, Branch 4, in Criminal Case No. 8688. The trial court found herein petitioner Lucio Morigo y Cacho guilty beyond reasonable doubt of bigamy and sentenced him to a prison term of seven (7) months of *prision correccional* as minimum to six (6) years and one (1) day of *prision mayor* as maximum. Also assailed in this petition is the resolution^[3] of the appellate court, dated September 25, 2000, denying Morigo's motion for reconsideration.

The facts of this case, as found by the court *a quo*, are as follows:

Appellant Lucio Morigo and Lucia Barrete were boardmates at the house of Catalina Tortor at Tagbilaran City, Province of Bohol, for a period of four (4) years (from 1974-1978).

After school year 1977-78, Lucio Morigo and Lucia Barrete lost contact with each other.

In 1984, Lucio Morigo was surprised to receive a card from Lucia Barrete from Singapore. The former replied and after an exchange of letters, they became sweethearts.

In 1986, Lucia returned to the Philippines but left again for Canada to work there. While in Canada, they maintained constant communication.

In 1990, Lucia came back to the Philippines and proposed to petition appellant to join her in Canada. Both agreed to get married, thus they were married on August 30, 1990 at the *Iglesia de Filipina Nacional* at Catagdaan, Pilar, Bohol.

On September 8, 1990, Lucia reported back to her work in Canada leaving appellant Lucio behind.

On August 19, 1991, Lucia filed with the Ontario Court (General Division) a petition for divorce against appellant which was granted by the court on January 17, 1992 and to take effect on February 17, 1992.

On October 4, 1992, appellant Lucio Morigo married Maria Jececha Lumbago^[4] at the *Virgen sa Barangay* Parish, Tagbilaran City, Bohol.

On September 21, 1993, accused filed a complaint for judicial declaration of nullity of marriage in the Regional Trial Court of Bohol, docketed as Civil Case No. 6020. The complaint seek (*sic*) among others, the declaration of nullity of accused's marriage with Lucia, on the ground that no marriage ceremony actually took place.

On October 19, 1993, appellant was charged with Bigamy in an Information^[5] filed by the City Prosecutor of Tagbilaran [City], with the Regional Trial Court of Bohol.^[6]

The petitioner moved for suspension of the arraignment on the ground that the civil case for judicial nullification of his marriage with Lucia posed a prejudicial question in the bigamy case. His motion was granted, but subsequently denied upon motion for reconsideration by the prosecution. When arraigned in the bigamy case, which was docketed as Criminal Case No. 8688, herein petitioner pleaded not guilty to the charge. Trial thereafter ensued.

On August 5, 1996, the RTC of Bohol handed down its judgment in Criminal Case No. 8688, as follows:

WHEREFORE, foregoing premises considered, the Court finds accused Lucio Morigo y Cacho guilty beyond reasonable doubt of the crime of Bigamy and sentences him to suffer the penalty of imprisonment ranging from Seven (7) Months of *Prision Correccional* as minimum to Six (6) Years and One (1) Day of *Prision Mayor* as maximum.

SO ORDERED.^[7]

In convicting herein petitioner, the trial court discounted petitioner's claim that his first marriage to Lucia was null and void *ab initio*. Following *Domingo v. Court of Appeals*,^[8] the trial court ruled that want of a valid marriage ceremony is not a defense in a charge of bigamy. The 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.

Anent the Canadian divorce obtained by Lucia, the trial court cited *Ramirez v. Gmur*,^[9] which held that the court of a country in which neither of the spouses is domiciled and in which one or both spouses may resort merely for the purpose of obtaining a divorce, has no jurisdiction to determine the matrimonial status of the parties. As such, a divorce granted by said court is not entitled to recognition anywhere. Debunking Lucio's defense of good faith in contracting the second marriage, the trial court stressed that following *People v. Bitdu*,^[10] everyone is presumed to know the law, and the fact that one does not know that his act constitutes a violation of the law does not exempt him from the consequences thereof.

Seasonably, petitioner filed an appeal with the Court of Appeals, docketed as CA-G.R. CR No. 20700.

Meanwhile, on October 23, 1997, or while CA-G.R. CR No. 20700 was pending before the appellate court, the trial court rendered a decision in Civil Case No. 6020 declaring the marriage between Lucio and Lucia void *ab initio* since no marriage ceremony actually took place. No appeal was taken from this decision, which then became final and executory.

On October 21, 1999, the appellate court decided CA-G.R. CR No. 20700 as follows:

WHEREFORE, finding no error in the appealed decision, the same is hereby AFFIRMED *in toto*.

SO ORDERED.^[11]

In affirming the assailed judgment of conviction, the appellate court stressed that the subsequent declaration of nullity of Lucio's marriage to Lucia in Civil Case No. 6020 could not acquit Lucio. The reason is that what is sought to be punished by Article 349^[12] of the Revised Penal Code is the act of contracting a second marriage before the first marriage had been dissolved. Hence, the CA held, the fact that the first marriage was void from the beginning is not a valid defense in a bigamy case.

The Court of Appeals also pointed out that the divorce decree obtained by Lucia from the Canadian court could not be accorded validity in the Philippines, pursuant to Article 15^[13] of the Civil Code and given the fact that it is contrary to public policy in this jurisdiction. Under Article 17^[14] of the Civil Code, a declaration of public policy cannot be rendered ineffectual by a judgment promulgated in a foreign jurisdiction.

Petitioner moved for reconsideration of the appellate court's decision, contending that the doctrine in *Mendiola v. People*,^[15] allows mistake upon a difficult question of law (such as the effect of a foreign divorce decree) to be a basis for good faith.

On September 25, 2000, the appellate court denied the motion for lack of merit.^[16] However, the denial was by a split vote. The *ponente* of the appellate court's original decision in CA-G.R. CR No. 20700, Justice Eugenio S. Labitoria, joined in the opinion prepared by Justice Bernardo P. Abesamis. The dissent observed that as the first marriage was validly declared void *ab initio*, then there was no first marriage to speak of. Since the date of the nullity retroacts to the date of the first marriage and since herein petitioner was, in the eyes of the law, never married, he cannot be convicted beyond reasonable doubt of bigamy.

The present petition raises the following issues for our resolution:

A.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE RULE THAT IN CRIMES PENALIZED UNDER THE REVISED PENAL CODE, CRIMINAL INTENT IS AN INDISPENSABLE REQUISITE. COROLLARILY, WHETHER OR NOT THE COURT OF APPEALS ERRED IN

FAILING TO APPRECIATE [THE] PETITIONER'S LACK OF CRIMINAL INTENT WHEN HE CONTRACTED THE SECOND MARRIAGE.

B.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE RULING IN PEOPLE VS. BITDU (58 PHIL. 817) IS APPLICABLE TO THE CASE AT BAR.

C.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE RULE THAT EACH AND EVERY CIRCUMSTANCE FAVORING THE INNOCENCE OF THE ACCUSED MUST BE TAKEN INTO ACCOUNT.^[17]

To our mind, the primordial issue should be whether or not petitioner committed bigamy and if so, whether his defense of good faith is valid.

The petitioner submits that he should not be faulted for relying in good faith upon the divorce decree of the Ontario court. He highlights the fact that he contracted the second marriage openly and publicly, which a person intent upon bigamy would not be doing. The petitioner further argues that his lack of criminal intent is material to a conviction or acquittal in the instant case. The crime of bigamy, just like other felonies punished under the Revised Penal Code, is *mala in se*, and hence, good faith and lack of criminal intent are allowed as a complete defense. He stresses that there is a difference between the intent to commit the crime and the intent to perpetrate the act. Hence, it does not necessarily follow that his intention to contract a second marriage is tantamount to an intent to commit bigamy.

For the respondent, the Office of the Solicitor General (OSG) submits that good faith in the instant case is a convenient but flimsy excuse. The Solicitor General relies upon our ruling in *Marbella-Bobis v. Bobis*,^[18] which held that bigamy can be successfully prosecuted provided all the elements concur, stressing that under Article 40^[19] of the Family Code, a judicial declaration of nullity is a must before a party may re-marry. Whether or not the petitioner was aware of said Article 40 is of no account as everyone is presumed to know the law. The OSG counters that petitioner's contention that he was in good faith because he relied on the divorce decree of the Ontario court is negated by his act of filing Civil Case No. 6020, seeking a judicial declaration of nullity of his marriage to Lucia.

Before we delve into petitioner's defense of good faith and lack of criminal intent, we must first determine whether all the elements of bigamy are present in this case. In *Marbella-Bobis v. Bobis*,^[20] we laid down the elements of bigamy thus:

- (1) the offender has been legally married;
- (2) 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;
- (3) he contracts a subsequent marriage; and