

FIRST DIVISION

[G.R. No. 159218, March 30, 2004]

**SALVADOR S. ABUNADO AND ZENAIDA BIÑAS ABUNADO,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

YNARES-SATIAGO, J.:

This petition for review on certiorari seeks to reverse and set aside the decision^[1] of the Court of Appeals in CA-G.R. No. 26135 which affirmed with modification the decision of the Regional Trial Court, Branch 77, San Mateo, Rizal in Criminal Case No. 2803 convicting petitioner Salvador S. Abunado of bigamy.

The records show that on September 18, 1967, Salvador married Narcisa Arceño at the Manila City Hall before Rev. Pedro Tiangco.^[2] In 1988 Narcisa left for Japan to work but returned to the Philippines in 1992, when she learned that her husband was having an extra-marital affair and has left their conjugal home.

After earnest efforts, Narcisa found Salvador in Quezon City cohabiting with Fe Corazon Plato. She also discovered that on January 10, 1989, Salvador contracted a second marriage with a certain Zenaida Biñas before Judge Lilian Dinulos Panontongan in San Mateo, Rizal.^[3]

On January 19, 1995, an annulment case was filed by Salvador against Narcisa.^[4] On May 18, 1995, a case for bigamy was filed by Narcisa against Salvador and Zenaida.^[5]

Salvador admitted that he first married Zenaida on December 24, 1955 before a municipal trial court judge in Concepcion, Iloilo and has four children with her prior to their separation in 1966. It appeared however that there was no evidence of their 1955 marriage so he and Zenaida remarried on January 10, 1989, upon the request of their son for the purpose of complying with the requirements for his commission in the military.

On May 18, 2001, the trial court convicted petitioner Salvador Abunado of bigamy and sentenced him to suffer imprisonment of six (6) years and one (1) day, as minimum, to eight (8) years and one (1) day, as maximum. Petitioner Zenaida Biñas was acquitted for insufficiency of evidence.^[6]

On appeal, the Court of Appeals affirmed with modification the decision of the trial court, as follows:

WHEREFORE, the Decision appealed from is hereby MODIFIED as to the penalty imposed but AFFIRMED in all other respects. Appreciating the

mitigating circumstance that accused is 76 years of age and applying the provisions of the Indeterminate Sentence Law, the appellant is hereby sentenced to suffer an indeterminate prison term of two (2) years, four (4) months and one (1) day of *prision correccional* as Minimum to six (6) years and one (1) day of *prision mayor* as Maximum. No costs.

SO ORDERED.^[7]

Petitioner is now before us on petition for review.

First, he argues that the Information was defective as it stated that the bigamous marriage was contracted in 1995 when in fact it should have been 1989.

Indeed, an accused has the right to be informed of the nature and cause of the accusation against him.^[8] It is required that the acts and omissions complained of as constituting the offense must be alleged in the Information.^[9]

The real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information. It is fundamental that every element of which the offense is comprised must be alleged in the Information. What facts and circumstances are necessary to be alleged in the Information must be determined by reference to the definition and essential elements of the specific crimes.^[10]

The question, therefore, is whether petitioner has been sufficiently informed of the nature and cause of the accusation against him, namely, that he contracted a subsequent marriage with another woman while his first marriage was subsisting.

The information against petitioner alleges:

That in or about and sometime in the month of January, 1995 at the Municipality of San Mateo, Rizal place (sic) within the jurisdiction of this Honorable Court, the above-named accused, having been legally married to complainant Narcisa Abunado on September 16, 1967 which has not been legally dissolved, did then and there willfully, unlawfully and feloniously contract a subsequent marriage to Zenaida Biñas Abunado on January 10, 1989 which has all the essential requisites of a valid marriage.

CONTRARY TO LAW.^[11]

The statement in the information that the crime was committed "in or about and sometime in the month of January, 1995," was an obvious typographical error, for the same information clearly states that petitioner contracted a subsequent marriage to Zenaida Biñas Abunado on January 10, 1989. Petitioner's submission, therefore, that the information was defective is untenable.

The general rule is that a defective information cannot support a judgment of conviction unless the defect was cured by evidence during the trial and no objection appears to have been raised.^[12] It should be remembered that bigamy can be successfully prosecuted provided all its elements concur – two of which are a

previous marriage and a subsequent marriage which possesses all the requisites for validity.^[13] All of these have been sufficiently established by the prosecution during the trial. Notably, petitioner failed to object to the alleged defect in the Information during the trial and only raised the same for the first time on appeal before the Court of Appeals.

Second, petitioner argues that Narcisa consented to his marriage to Zenaida, which had the effect of absolving him of criminal liability.

In this regard, we agree with the Court of Appeals when it ruled, thus:

x x x, while he claims that there was condonation on the part of complainant when he entered into a bigamous marriage, the same was likewise not established by clear and convincing evidence. But then, a pardon by the offended party does not extinguish criminal action considering that a crime is committed against the State and the crime of Bigamy is a public offense which can be denounced not only by the person affected thereby but even by a civic-spirited citizen who may come to know the same.^[14]

Third, petitioner claims that his petition for annulment/declaration of nullity of marriage was a prejudicial question, hence, the proceedings in the bigamy case should have been suspended during the pendency of the annulment case. Petitioner, in fact, eventually obtained a judicial declaration of nullity of his marriage to Narcisa on October 29, 1999.^[15]

A prejudicial question has been defined as one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. The rationale behind the principle of suspending a criminal case in view of a prejudicial question is to avoid two conflicting decisions.^[16]

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. Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that 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.^[17]

The outcome of the civil case for annulment of petitioner's marriage to Narcisa had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.^[18]

Thus, under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding.^[19] In this case, even

if petitioner eventually obtained a declaration that his first marriage was void *ab initio*, the point is, both the first and the second marriage were subsisting before the first marriage was annulled.

Finally, petitioner claims that the penalty imposed on him was improper.

Article 349 of the Revised Penal Code imposes the penalty of *prision mayor* for bigamy. Under the Indeterminate Sentence Law, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. The penalty next lower would be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.^[20]

In light of the fact that petitioner is more than 70 years of age,^[21] which is a mitigating circumstance under Article 13, paragraph 2 of the Revised Penal Code, the maximum term of the indeterminate sentence should be taken from *prision mayor* in its minimum period which ranges from six (6) years and one (1) day to eight (8) years, while the minimum term should be taken from *prision correccional* in any of its periods which ranges from six (6) months and one (1) day to six (6) years.

Therefore, the penalty imposed by the Court of Appeals, *i.e.*, two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, is proper.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals in CA-G.R. CR No. 26135, finding petitioner Salvador S. Abunado guilty beyond reasonable doubt of the crime of bigamy, and sentencing him to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, is **AFFIRMED**.

Costs de officio.

SO ORDERED.

*Davide, Jr., C.J., (Chairman), Panganiban, and Azcuna, JJ., concur.
Carpio, J., see concurring opinion.*

^[1] Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Marina L. Buzon and Danilo B. Pine.