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THIRD DIVISION

[G.R. No. 119063, January 27, 1997]

JOSE G. GARCIA, PETITIONER, VS. COURT OF APPEALS, PEOPLE OF THE PHILIPPINES AND ADELA TEODORA P. SANTOS, RESPONDENTS.
D E C I S I O N

DAVIDE, JR., J.:

The issue here is whether the Court of Appeals committed reversible error in affirming the trial court's order granting the motion to quash the information for bigamy based on prescription.

On 28 August 1991, petitioner Jose G. Garcia filed with the Quezon City Prosecutor's Office an "Affidavit of Complaint" [1] charging his wife, private respondent Adela Teodora P. Santos alias "Delia Santos," with Bigamy, Violation of C.A. No. 142, as amended by R.A. No. 6085, and Falsification of Public Documents. However, in his letter of 10 October 1991 to Assistant City Prosecutor George F. Cabanilla, the petitioner informed the latter that he would limit his action to bigamy. [2]

After appropriate proceedings, Assistant Prosecutor Cabanilla filed on 8 January 1992 with the Regional Trial Court (RTC) of Quezon City an information, [3] dated 15 November 1991, charging the private respondent with Bigamy allegedly committed as follows:

> That on or before the 2nd day of February, 1957, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being previously united in lawful marriage with REYNALDO QUIROCA, and without the said marriage having been dissolved, (or before the absent spouse has been declared presumptively dead by a judgment rendered in the proper proceedings), did then and there wilfully, unlawfully and feloniously contract a second marriage with JOSE G. GARCIA, which marriage has [sic] discovered in 1989, to the damage and prejudice of the said offended party in such amount as may be awarded under the provisions of the Civil Code.
>
> CONTRARY TO LAW.

The information was docketed as Criminal Case No. Q-92-27272 and assigned to Branch 83 of the said court. On 2 March 1992, the private respondent filed a Motion to Quash alleging prescription of the offense as ground therefor. She contended that by the petitioner's admissions in his testimony given-on 23 January 1991 in Civil Case No. 90-52730, entitled "Jose G. Garcia v. Delia S. Garcia," and in his complaint filed with the Civil Service Commission (CSC) on 16 October 1991, the petitioner discovered the commission of the offense as early as 1974. Pursuant then to Article

91 of the Revised Penal Code (RPC), [4] the period of prescription of the offense started to run therefrom. Thus, since bigamy was punishable by prision mayor, [5] an afflictive penalty [6] which prescribed in fifteen years pursuant to Article 92 of the RPC, then the offense charged prescribed in 1989, or fifteen years after its discovery by the petitioner.

The private respondent quoted [7] the petitioner's testimony in Civil Case No.90-52730 as follows:

> Q No, no, just answer. What did you learn from her (Eugenia) about the private respondent?
> A That she has been married previously in case I don't know it. But she said she has been previously married, in fact I saw her husband - Rey, a few days ago and they said, "Baka magkasama pa silang muli:"
>
> xxx
>
> ATTY. EVANGELISTA:
>
> Q When did Eugenia R. Balingit told [sic] that private respondent was already married to another man?
> A That was when I told her that we are separating now. I told her in tagalog, "na maghihiwalay na kami ni Delia ngayon." "Ang unang tanong niya sa akin, 'si Rey ba ang dahilan,' ang alam ko po, Rey ang dating boyfriend niya, kaya ang sabi ko, 'hindi po, Mario ang pangalan, ' napabagsak po siya sa upuan, sabi niya, 'hindi na nagbago."'
>
> Q When was that when you came to know from Eugenia Balingit, the judicial guardian, that private respondent was already married to another man when she married you?
> A That was when the affair was happening and I found out.
>
> Q What year?
> A 1974. [8]

The portion of the complaint filed on 16 October 1991 before the CSC which the private respondent alluded to, reads as follows:

> 5. At the time the respondent married the herein complainant she never informed him that she was previously married to a certain "REYNALDO QUIROCA" on December 1, 1951 wherein she used the name of "ADELA SANTOS" which was part of her true name "ADELA TEODORA P. SANTOS" as per her genuine Baptismal Certificate issued by the Parish of San Guillermo, Bacolor, Pampanga, a copy of the said Baptismal Certificate is hereto attached as ANNEX "D";
>
> 6. x x x
>
> 7. These facts were discovered only by the herein complainant in the year 1974 where they separated from each other because of her illicit relations with several men continued use of her alias name "DELIA",

> without proper authority from the Courts; and committing a series of fraudulent acts; her previous marriage to a certain "Reynaldo Quiroca" is evidenced by a certification issued by the Local Civil Registrar of Manila, a copy of which is hereto attached as ANNEX "F"; [9]

In its 29 June 1992 order, [10] the trial court granted the motion to quash and dismissed the criminal case, ruling in this wise:

> This court believes that since the penalty prescribed under Article 349 of the Revised Penal Code for the offense of bigamy is prision mayor, which is classified as an afflictive penalty under Article 25 of the same Code, then said offense should prescribe in fifteen (15) years as provided in Article 92 of the Code. The complainant having discovered the first marriage of the accused to one Reynaldo Quiroca in 1974 when he was informed of it by one Eugenia Balingit, the offense charged has already prescribed when the information was filed in this case on November 15, 1991. The argument presented by the prosecution that it was difficult for the complainant to obtain evidence of the alleged first marriage, hence, the prescriptive period should be counted from the time the evidence was secured will not hold water. Article 91 of the Revised Penal Code specifically provides, thus:

"The period of prescription shall commence to run from the day on which the crime is discovered x x x"

it did not state "on the day sufficient evidence was gathered," thus this Court cannot change the requirements of the law.

The petitioner moved for reconsideration of the above order on 26 August 1992, [11] to which he filed "numerous" supplements thereto, focusing on the private respondent's many trips abroad which the petitioner claimed suspended the running of the prescriptive period. These trips were enumerated in the certification [12] issued by Associate Commissioner Ramon M. Morales of the Bureau of Immigration (BID), which reads as follows:

> This is to certify that the name GARCIA/DELIA/S. appears in the Bureau's files of Arrivals and Departures as having the following travel records:
>
> Departed for HKG on 06/03/77 aboard PR
>
> Arrived from HKG on 07/02/77 aboard PA
>
> Arrived from SYD on 07/09/77 aboard BR
>
> Arrived from GUM on 06/14/80 aboard PA
>
> Arrived from MEL on 07/17/81 aboard PR
>
> Arrived from TYO on 05/20/83 aboard BA
>
> Departed for HKG on 09/22/83 aboard PR

Arrived from SIN	on	09/28/83	aboard PR
Departed for TYO	on	04/30/84	aboard PA
Arrived from SFO	on	07/03/84	aboard PA
Departed for TYO	on	11/19/84	aboard PA
Departed for TYO	on	08/05/85	aboard PA
Departed for TYO	on	11/17/86	aboard UA
Arrived from LAX	on	12/12/87	aboard UA
Departed for LAX	on	11/30/87	aboard UA
Departed for CHI	on	11/14/88	aboard UA

The trial court disallowed reconsideration of its 29 June 1992 order, finding "no urgent or justifiable reason to disturb or set [it] aside." As to the sojourns abroad of the private respondent as shown in the certification, the trial court held that the same "is not that kind of absence from the Philippines which will interrupt the period of prescription of the offense charged . . . " [13]

The petitioner then appealed to the Court of Appeals which docketed the appeal as CA-G.R. CR No. 14324. He contended therein that: (a) the trial court erred in quashing the information on the ground of prescription; and (b) the counsel for the accused was barred from filing the motion to quash the information against the accused. [14] As to the first, the petitioner argued that bigamy was a public offense, hence "the offended party is not the first or second (innocent) spouse but the State whose law/policy was transgressed." He tried to distinguish bigamy from private offenses such as adultery or concubinage "where the private complainant is necessarily the offended party," thus, the prescriptive period for the former should commence from the day the State, being the offended party, discovered the offense, which in this case was on 28 August 1991 when the petitioner filed his complaint before the Prosecutor's Office. The petitioner added that the "interchanging use" In Article 91 of the RPC of the terms "offended party," "authorities," and "their agents" supports his view that the State is the offended party in public offenses.

Additionally, the petitioner referred to the general rule stated in People v. Alagao [15] "that in resolving the motion to quash a criminal complaint or information[,] the facts alleged in the complaint or information should be taken as they are." The information in this case mentioned that the bigamy was discovered in 1989. He admitted, however, that this rule admits of exceptions, such as when the ground for the motion to quash is prescription of the offense, as provided in Section 4 of the old Rule 117 of the Rules of Criminal Procedure. Nonetheless, he advanced the view that this exception is no longer available because of the implied repeal of Section 4, as the amended Rule 117 no longer contains a similar provision under the rule on motions to quash; and that granting there was no repeal, the private respondent failed to introduce evidence to "support her factual averment in her motion to quash," which is required by Rule 117. He further asserted that the factual bases of

the motion to quash, viz., the petitioner's testimony in Civil Case No. 90-52730 and his complaint filed with the CSC are not conclusive because the testimony is hearsay evidence, hence inadmissible, while the complaint is vague, particularly the following portion quoted by the private respondent:

> 7. These facts where discovered only by the herein complainant in the year 1974 when they separated from each other because of her illicit relations with several men continued use of her alias name "DELIA", without proper authority from the Courts; and committing a series of fraudulent acts; her previous marriage to a certain "Reynaldo Quiroca" is evidenced by a certification issued by the Local Civil Registrar of Manila, a copy of which is hereto attached a ANNEX "F";

The petitioner alleged that the phrase "These facts" in said paragraph 7 does not clearly refer to his discovery of the private respondent's first marriage. Moreover, he doubted whether the term "discovered" in the said paragraph was used in the sense contemplated by law. At best, the petitioner theorized, the discovery only referred to the "initial, unconfirmed and uninvestigated raw, hearsay information" which he received from Balingit.

Finally, the petitioner reiterated that the prescriptive period was interrupted several times by the private respondent's numerous trips abroad.

As regards his second contention, the petitioner argued that the counsel for the private respondent had already stated that he represented only Delia S. Garcia and not Adela Teodora P. Santos. Consequently, the private respondent's counsel could not ask for the quash of the information in favor of Adela Teodora P. Santos alias Delia Santos. The petitioner opined that the counsel for the private respondent should have sought a dismissal of the case in favor of Delia Garcia alone.

The Court of Appeals gave credence to the private respondent's evidence and concluded that the petitioner discovered the private respondent's first marriage in 1974. Since the information in this case was filed in court only on 8 January 1992, or eighteen years after the discovery of the offense, then the 15-year prescriptive period had certainly lapsed. [16] It further held that the quash of an information based on prescription of the offense could be invoked before or after arraignment and even on appeal, [17] for under Article 89(5) of the RPC, the criminal liability of a person is "'totally extinguish[ed]' by the prescription of the crime, which is a mode of extinguishing criminal liability." Thus, prescription is not deemed waived even if not pleaded as a defense. [18]

Undaunted, the petitioner is now before us on a petition for review on certiorari to annul and set aside the decision of the Court of Appeals and to compel the respondent court to remand the case to the trial court for further proceedings. He submits the following assignment of errors:

I

BIGAMY IS A PUBLIC OFFENSE, CONSEQUENTLY, PRESCRIPTION SHOULD HAVE BEEN COUNTED FROM THE TIME THE STATE DISCOVERED ITS COMMISSION;

II