

A RE-EXAMINATION OF SUPREME COURT RULINGS ON MULTIPLE MARRIAGES AND THE EFFECT OF THE FAMILY CODE*

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The drastic changes introduced by the Family Code in the law on marriage spawned many controversies, especially Articles 36, 40, and 54, particularly on the liability of the accused in bigamy cases. Under Article 349 of the Revised Penal Code, bigamy is committed by a person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved.

Article 36 of the Family Code provides:

A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

This article was proposed by the late Justice J.B.L. Reyes to embody the canonical concept of marriage, i.e., for the establishment of conjugal and family life. Originally, the draft submitted to the President for approval, contained a limitation of action, on the ground that psychological impotence might be curable. But the draft was changed, the period for prescription was removed, and Article 36 was made retroactive to apply to marriages celebrated before the effectivity date of the Family Code.

A classic example of psychological impotence is illustrated in the case of *Chi Ming Tsoi v. Court of Appeals*,¹ where from the time of the

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¹ G.R. No. 119190, 266 SCRA 324, Jan. 16, 1997.

celebration of the marriage on May 1988, up to the time they separated in 1989, there was no sexual contact – a case, according to Justice Torres, of “unfulfilled vows of unconsummated marital obligations.”

Article 40 of the Family Code was proposed by former Justice Florida Ruth P. Romero and was readily acceded to by the members of the committee. It reads:

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.

When originally proposed, I thought that the provision was intended to embody the ruling of the Supreme Court in the case of *Vda. de Consuegra v. GSIS*,² where the two widows of the deceased employee were claiming as heirs the retirement pay. The first marriage took place in 1937; the second in 1957. The Court held that as the second wife acted in good faith, and as her marriage had not been declared void before the death of the husband in 1965, a *just and equitable* solution is to give one-half to the second wife and one-half to the first wife.

But, as pointed out by my students, the Article uses the phrase ‘for purposes of remarriage’. Did the provision intend to overturn the Supreme Court rulings in the criminal cases of *People v. Mendoza*³ and of *People v. Aragon*⁴? In both cases, the accused contracted three marriages, the third after the death of the first wife. The court acquitted the accused, on the ground that, as the second marriage was bigamous, there was no need of a previous judicial declaration that the second marriage was void.

There are two 2004 cases where the Supreme Court applied Articles 36 and 40 of the Family Code. The first is the case of *Tenebro v. Court of Appeals*,⁵ decided *en banc*, with 6 Justices dissenting, and the second is the case of *Abunado v. People*,⁶ decided by a Division.

² G.R. No. 28093, 37 SCRA 315, Jan. 30, 1971.

³ G.R. No. 5877, 95 Phil. 845, Sept. 28, 1954.

⁴ G.R. No. 10016, 100 Phil. 1033, Feb. 28, 1957.

⁵ G.R.No.150758, 423 SCRA 272, Feb. 18, 2004.

⁶ G.R. No. 159218, 426 SCRA 562, Mar. 30, 2004.

In the case of *Tenebro*, the accused married his first wife in 1986, and married his second wife on *April 10, 1990*. In 1991, he informed his wife that he was previously married to another, and left his second wife, saying that he will live with his first wife. Instead, he married another on January 25, 1993. When his second wife learned of this, she filed a criminal complaint for bigamy on July, 1995, based on his first marriage in 1986.

The accused filed a civil case to declare his second marriage null and void, on the ground of psychological incapacity of his second wife. The accused was convicted of bigamy on November, 1997, and appealed to the Court of Appeals. On November 20, 1997, the trial court, in the civil case, annulled the second marriage, on the ground of psychological incapacity of the second wife. The Court of Appeals affirmed the conviction of the accused, and the criminal case was elevated to the Supreme Court on a petition for review.

The *issue* raised before the Supreme Court was whether the final judgment declaring the second marriage void, on the ground of psychological incapacity of the second wife, retroacted to the date of the celebration of the second marriage on *April 10, 1990*.

The *majority* decision, penned by Justice Consuelo Ynares-Santiago, ruled that although a judicial declaration that the marriage is void *retroacts* to the celebration of such marriage, still the law recognizes that a void marriage has legal effects, as shown by Article 54 of the Family Code which considers children of void marriage under Article 36 as legitimate. Another legal effect, according to Justice Ynares-Santiago, is the criminal liability under the Revised Penal Code. As the second marriage complied with the essential and formal requisites for a valid marriage, the mere act of contracting a subsequent marriage during the existence of a valid marriage constitute the crime of bigamy. Otherwise, according to Justice Ynares-Santiago, it would "Allow individuals to deliberately ensure that each marital contract be flawed in some manner, and thus escape the consequences of contracting multiple marriages while beguiling throngs of hapless women with the promise of futurity and commitment."

Justice Vitug, in his separate opinion, stated that the absolute nullity of either the first or second marriage prior to its judicial declaration as being void, constitute a valid defense in an action for bigamy, except a void marriage on account of psychological incapacity of a party or both parties under Article 36 of the Family Code. His reason is that

psychological incapacity does not relate to an infirmity in the essential or formal requisite of a valid marriage. Hence, according to him, the judicial declaration of nullity on said ground merely nullifies the effect of the marriage between the spouses, but not the fact of perfection of a bigamous marriage, since it merely dissolves the relationship of the spouses.

The *dissenting* opinion led by Justice Antonio Carpio cited the ruling case law for 75 years wherein the Supreme Court held that if the second marriage for which the accused is prosecuted for bigamy is void on grounds other than the existence of a prior marriage, there is no crime of bigamy. To constitute bigamy, the subsequent marriage must be valid, except for the existence of a prior marriage. A *void* marriage cannot constitute a *second* marriage to sustain conviction for bigamy. Substantive due process requires that the law be strictly construed against the State and liberally in favor of the accused.

The *dissenting* opinion of Justice Callejo Sr., is to the effect that since the second marriage is null and void *ab initio*, such marriage, in legal contemplation, never existed, and for that reason, one of the elements of bigamy had disappeared, citing Groizard (*El Código Penal*, 5th ed., Vol. 5):

...El matrimonio entonces, en realidad, no existe, pierda toda fuerza, en virtud del vicio intrínseco que lleva, y, por tan to, uno de los elementos del delito desaparece y la declaración de inculpabilidad procede...

The second case of *Abunado v. People of the Philippines*⁷ involved complicated facts. There were three marriages contracted by the accused: one in 1955 during which four children were born prior to their separation in 1966; the second was in 1967 to the complainant; and the third in 1989, to his first wife, at the instance of his son of the first marriage to comply with the requirements for his commission in the military.

On January 1995, the accused filed an action to annul the second marriage for being bigamous. The second wife subsequently charged the accused of bigamy for contracting a marriage in 1989.

⁷ G.R. No. 159218, 426 SCRA 562, Mar. 30, 2004.

The accused was convicted of bigamy on May 2001, and appealed the case to the Court of Appeals. The civil case for annulment of the second marriage became final on October 29, 1999. The information for bigamy involved the 1967 and the 1989 marriages, while the annulment case involved the 1955 and the 1967 marriages.

The question raised before the Supreme Court was whether the annulment of the 1967 marriage, on the ground that it was bigamous, constitute a prejudicial question in the criminal case wherein it was the 1967 marriage that was alleged as the first marriage.

The Supreme Court held that the declaration of nullity of the first marriage (1967 marriage) had no bearing as to his liability for contracting the 1989 marriage, because at the time he contracted the subsequent marriage, the 1967 marriage was still subsisting. Prior to its declaration of nullity, the crime had already been consummated.

In other words, the Supreme Court applied Article 40 of the Family Code, requiring a judicial declaration of nullity of the previous marriage (1967 marriage) before contracting the 1989 marriage. Here, the annulment case of the second marriage was filed *ahead* of the criminal charge filed against the accused. Therefore, the accused could not set it up as a defense in the criminal case.

To deny him the right to set up the nullity of the second marriage, which fact was embodied in a final judgment while the criminal case is pending, merely because he did not obtain the final judgment earlier, would constitute a grave injustice. He was not being prosecuted for the 1967 marriage, because said crime had prescribed in 1982, but for the marriage in 1989 to his first wife, which marriage was still subsisting.

At most, the Family Code governs the civil relations among persons but not their criminal liability. A general law cannot amend or modify another general law (Revised Penal Code).

The same anomalous situation occurred in the case of *Carino v. Carino*,⁸ where two marriages were contracted by the decedent, one in 1969, and the other in 1992. Both women were claiming the right as heirs to the

⁸ G.R. No. 132529, 351 SCRA 127, Feb. 2, 2001.

death benefits left by the decedent. The Supreme Court, in the case pending before it, found the first marriage void, for lack of license to marry. But, it does not necessarily follow, according to the Court that the second is valid, because Article 40 of the Family Code requires that the first marriage be declared void before contracting another marriage. So both marriages were declared void, and the property relations in common-law relationship provided for in the Family Code were applied to both marriages.

The anomaly lies in the fact that the Supreme Court, in the same case, held that the first marriage was void, and yet refused to honor its own findings, because of the failure to obtain a judicial declaration of its nullity before contracting another marriage. In effect, the Supreme Court considered Article 40 of the Family Code as substantive in nature, when the avowed reason for such requirement is that the parties cannot determine for themselves the nullity of the marriage, and that only the courts can declare its nullity. In this case, the Supreme Court found the first marriage void *ab initio*, and yet refused to recognize its own findings.

For a clear understanding of the rulings of the Supreme Court involving multiple marriages, before the effectivity of the Family Code, let us review the facts and the law applied, at the time the first marriage took place.

CIVIL CASES

The earliest case cited by the Supreme Court is *Lao v. Dee Tim* (1924),⁹ where two women with their children claimed to have a better right to the estate of the decedent. The first marriage took place in 1893 and the other in 1903. The law applied was the *Leyes de Matrimonio* of the *Siete Partidas*, which provided that where both women married to the same man acted in good faith, their children will be regarded as legitimate, and each family entitled to one-half the estate of the husband.

In the case of *Francisco v. Jason*¹⁰ (1934), two widows and their children claimed the estate of the decedent. The first marriage took place in

⁹ G.R. No. 21017, 45 Phil. 739, Feb. 25, 1924.

¹⁰ G.R. No. 39871, 60 Phil. 442, Aug. 30, 1934.

1896, and the second in 1906. The Spanish Civil Code was applied. Article 69 of said Code provides that "a marriage contracted in good faith produces civil effects. Good faith is presumed, if the contrary is not shown. If bad faith existed on both spouses, the marriage shall produce civil effects only with respect to their children." Both spouses were presumed to have acted in good faith, and the civil effects were the formation of the conjugal partnership and the legitimacy of their children born, before the marriage was declared void.

In the case of *Pisalbon v. Bejet*¹¹ (1943), two widows, one married to the decedent in 1903, the other in 1914, claimed a homestead applied by the husband. The second wife was ignorant of the first marriage. The second wife and the husband both cleared and worked the land. The Court awarded one-half to the first marriage, and one-half to the second marriage, citing the case of *Lao v. Dee Tim*.

In the case of *Gomez v. Lipana*¹² (1970), the action was for the recovery by the two widows of their share in the land bought by the husband during the second marriage. The first marriage took place in 1930, the second in 1935. Section 29 of the Marriage Law (Act 3613) which took effect in 1929, provided that a marriage contracted during the existence of a previous marriage, is bigamous, unless the first marriage is annulled or dissolved. The Court held that a *just and equitable* solution is to give one-half to the first marriage, and one-half to the second marriage, citing the cases of *Lao v. Dee Tim* and *Francisco v. Jason*.

In the case of *Vda. de Consuegra v. GSIS*¹³ (1971), two widows of the deceased, one married in 1937, and the second in 1957, claimed their right to the retirement benefits of the decedent who died in 1965. The Court held that the second wife contracted the marriage in good faith, and that there was no need of a judicial declaration of nullity. Citing the cases of *Lao v. Dee Tim* and *Gomez v. Lipana*, as the first marriage was dissolved by the death of the husband before filing a case for nullity of the second marriage, a *just and equitable* solution is to give one-half to the second wife, and one-half to the first wife.

¹¹ G.R. No. 48430, 74 Phil. 88, Jan. 30, 1943.

¹² G.R. No. 23214, 33 SCRA 615, June 30, 1970.

¹³ G.R. No. 28093, 37 SCRA 315, Jan. 30, 1971.

In the case of *Wiegel v. Sempio-Diy*¹⁴ (1986), the husband sought to declare his marriage to the defendant in 1978 null and void, on the ground that the latter was married to another in 1972. The defendant claimed that she and her previous husband were both forced to marry each other. The Court held that the previous marriage of the defendant was voidable and binding until annulled. As the previous marriage of the defendant had not been annulled, her marriage to the plaintiff was bigamous and void, under Article 80 of the New Civil Code.

In the case of *Yu v. CA*¹⁵ (1986), the first marriage was contracted in 1939, the second in 1948. The second marriage was considered void under Article 83 of the New Civil Code. As the husband died in 1964, there was no need for a judicial declaration of the nullity of the second marriage. The children of the second marriage were considered natural children by legal fiction.

In the case of *Ty v. CA*¹⁶ (2000), the first marriage took place in 1977. In 1980, the first marriage was declared void, for lack of license. The issue was whether the first marriage should have been declared void, before contracting a second marriage, for the latter to be considered valid. The Court held that as the marriage took place under the New Civil Code, there was no need of a previous judicial declaration of the nullity of the first marriage. The second marriage is valid.

CRIMINAL CASES INVOLVING BIGAMY

Coming to the criminal cases involving multiple marriages, decided before the effectivity of the Family Code, there are two significant cases involving similar facts: *People v. Mendoza*,¹⁷ decided in 1954, and the case of *People v. Aragon*,¹⁸ decided in 1957.

¹⁴ G.R. No. 53703, 143 SCRA 499, Aug. 19, 1986.

¹⁵ G.R. No. 40003, 145 SCRA 229, Oct. 28, 1986.

¹⁶ G.R. No. 127406, 346 SCRA 86, Nov. 27, 2000.

¹⁷ G.R. No. 5877, 95 Phil. 845, Sept. 28, 1954.

¹⁸ G.R. No. 10016, 100 Phil. 1033, Feb. 28, 1957.

In the case of *People v. Mendoza*, the accused married his first wife in 1936. He had a second marriage in 1941. His first wife died in 1943. He had a third marriage in 1949. It was for this third marriage, that his second wife charged him of bigamy.

Section 29 of the Marriage Law (Act 3313) provided that the subsequent marriage is void from its performance. The Court held that there is no need for a judicial decree to establish the invalidity of the second marriage, as distinguished from a mere annulable marriage.

Justice Alex Reyes *dissented*, citing 3 Viada, *Codigo Penal* p. 275, to the effect that while there is no declaration, the presumption is in favor of the validity of the marriage.

In the case of *People v. Aragon*, the first marriage took place in 1925; the second in 1934. The first wife died in 1939. The accused married for the third time in 1953. The criminal charge was filed by the second wife.

The Court cited the Marriage Law, and the case of *Mendoza*, and ruled that a strict interpretation of penal laws should be made in favor of the accused and that the Revised Penal Code did not require a judicial declaration of nullity of void marriages. The last marriage is valid and prosecution cannot prosper.

Three Justices *dissented*, on the ground that it is not for the parties to judge whether their marriage is void or not. *Viada* says, as long as there is no judicial declaration of nullity, the presumption is in favor of the validity of marriage, and as a result, one who contracts another marriage before a declaration of nullity incurs the penalty of the law.

COMMENTS

ARTICLE 40 OF THE FAMILY CODE

Article 40 provides:

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. (*emphasis supplied*)

The phrase used is "may be invoked", and not "must be obtained before remarrying". The phrase "for purposes of remarriage" can be construed as for purposes of subsequent marriage; in which case, the provision can be construed to mean that when the validity of the subsequent marriage is raised in a pending litigation, the spouse who contracted a subsequent marriage may "invoke" the nullity of his prior marriage by virtue of a final judgment declaring such prior marriage void.

To require such prior judgment *before remarrying* would lead to multifarious litigation, if it could be set up as a defense in a pending litigation, so long as he could procure such final judgment before the pending litigation is ended. Moreover, it is unrealistic to expect a spouse to wait for several years to obtain such judgment *before remarrying*.

In the cases decided under the Family Code, a literal interpretation of Article 40 resulted in a strict and narrow interpretation of the law when the avowed purpose of such requirement is based on the opinion of *Viada*. In the latter's commentary of the Spanish Penal Code in 1890, he was of the opinion that the spouses should not be permitted to judge for themselves the validity of their marriage; that such matter should be submitted to a judge of competent tribunal; and that while there is no such declaration of nullity, the *presumption* is in favor of the validity of the marriage.

It is a mere presumption, and that presumption is rebutted by a final judgment declaring its nullity, whether such judgment was procured *before* or *after* remarrying. To deny the accused of such defense, merely because the judgment was obtained *after* remarrying, would sacrifice substance to form, and deny him the right to a fair trial. To deny the accused the right to set it up as a prejudicial question, on the ground that it would unduly prolong the litigation is *not* a justifiable ground, because the right to a speedy trial belongs to the accused, and he could validly waive such right if essential to his defense.

ARTICLE 349 OF THE REVISED PENAL CODE

Under Article 349 of the Revised Penal Code, bigamy is committed by a "person who shall contract a second or subsequent marriage before the

former marriage has been **legally dissolved.**" The term "legally dissolved" implies a valid existing marriage. If the first marriage is void *ab initio* or inexistent, there is nothing to "legally dissolve". Likewise, if the subsequent marriage is void and inexistent, for grounds other than it is bigamous, in the eyes of the law, there is *no* marriage. The accused may have committed another offense, but *not* bigamy.

ARTICLE 54 OF THE FAMILY CODE

Article 54 provides:

Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory, shall be considered legitimate. **Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate.** (*emphasis supplied*)

When the draft of the Family Code was first submitted to the President for approval, Article 54 was broad and general, and did not contain the phrase "under Article 36" or the last sentence. It was not intended to give civil effects to void marriages, but, as stated by the late Justice J.B.L. Reyes, who proposed the Article, "it is not the fault of the children that they are born illegitimate."

Justice Sempio-Diy, who was commissioned by the Chairman of the Civil Law Committee to confer with the officials in Malacañang to make the necessary changes, came back with the draft limiting the application of Article 54 to children of void marriages under Article 36. Justice Caguioa added the last sentence. The change was presumably to make it conform to Article 165 formulated by the Family Law Committee created ahead by the IBP. Article 165 of the Family Code provides that "children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code."

So that, as approved, there are only two void marriages whose children are considered legitimate: those falling under Article 36 (if any) and under Article 53 when the presumptive legitime of the children born of the previous marriage were not given.