

## SECOND DIVISION

[ G.R. No. 207406, January 13, 2016 ]

**NORBERTO A. VITANGCOL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**LEONEN, J.:**

Persons intending to contract a second marriage must first secure a judicial declaration of nullity of their first marriage. If they proceed with the second marriage without the judicial declaration, they are guilty of bigamy regardless of evidence of the nullity of the first marriage.

This resolves a Petition for Review on Certiorari<sup>[1]</sup> assailing the Court of Appeals Decision<sup>[2]</sup> dated July 18, 2012 and Resolution<sup>[3]</sup> dated June 3, 2013. The Court of Appeals affirmed with modification the Decision<sup>[4]</sup> of Branch 25 of the Regional Trial Court of Manila convicting petitioner Norberto Abella Vitangcol (Norberto) of bigamy punished under Article 349 of the Revised Penal Code.<sup>[5]</sup> Norberto was sentenced to suffer the indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum.<sup>[6]</sup>

In the Information dated April 29, 2008, the Office of the City Prosecutor of Manila charged Norberto with bigamy.<sup>[7]</sup> The accusatory portion of the Information reads:

That on or about December 4, 1994, in the City of Manila, Philippines, the said accused, being then legally married to GINA M. GAERLAN, and without such marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second or subsequent marriage with ALICE G. EDUARDO-VITANGCOL which second marriage has all the legal requisites for its validity with the said accused NORBERTO ABELLA VITANGCOL knowing fully well prior to and at the time of the celebration of the second marriage he was already married to the said GINA M. GAERLAN.

Contrary to law.<sup>[8]</sup>

Norberto was arraigned, pleading not guilty to the charge. Trial then ensued.<sup>[9]</sup>

According to the prosecution, on December 4, 1994, Norberto married Alice G. Eduardo (Alice) at the Manila Cathedral in Intramuros. Born into their union were three (3) children.<sup>[10]</sup>

After some time, Alice "began hearing rumors that [her husband] was previously

married to another womanf.]"<sup>[11]</sup> She eventually discovered that Norberto was previously married to a certain Gina M. Gaerlan (Gina) on July 17, 1987, as evidenced by a marriage contract registered with the National Statistics Office. Alice subsequently filed a criminal Complaint for bigamy against Norberto.<sup>[12]</sup>

On the other hand, Norberto alleged that he and Alice became romantically involved sometime in 1987.<sup>[13]</sup> "After much prodding by their friends and relatives, [he and Alice] decided to get married in 1994."<sup>[14]</sup>

Before finalizing their marriage plans, however, Norberto revealed to Alice that he had a "fake marriage"<sup>[15]</sup> with his college girlfriend, a certain Gina Gaerlan.<sup>[16]</sup> Nevertheless, despite Norberto's revelation, Alice convinced him that they proceed with the wedding. Thus, Norberto and Alice were married on December 4, 1994 and, thereafter, had three children.<sup>[17]</sup>

Sometime in 2007, Norberto heard rumors from their household workers that Alice was having an affair with a married man. He was able to confirm the affair after hearing Alice in a phone conversation with her paramour.<sup>[18]</sup>

Norberto then sought advice from his business lawyer who later on convinced Alice to end the affair. The lawyer also warned Alice of the possible criminal liability she may incur if she continued seeing her paramour.<sup>[19]</sup>

Allegedly in retaliation to the threat of criminal action against her, Alice filed the criminal Complaint for bigamy against Norberto.<sup>[20]</sup>

Finding that Norberto contracted a second marriage with Alice despite his subsisting valid marriage with Gina, Branch 25 of the Regional Trial Court of Manila convicted Norberto of bigamy. The dispositive portion of the Decision dated September 1, 2010 reads:

**WHEREFORE**, in view of the foregoing, the Court hereby finds accused Norberto Abella Vitangcol GUILTY beyond reasonable doubt of the crime of BIGAMY defined and penalized under Article 349 of the Revised Penal Code. Accused is hereby sentenced to suffer the penalty of six (6) years and one (1) day of *prision mayor* as minimum imprisonment to twelve (12) years of *prision mayor* as maximum imprisonment.

**SO ORDERED.**<sup>[21]</sup>

On appeal, the Court of Appeals sustained the guilty verdict against Norberto but modified the penalty imposed in accordance with the Indeterminate Sentence Law. The dispositive portion of the Court of Appeals Decision dated July 18, 2012 reads:

**WHEREFORE**, premises considered, the assailed Decision of the Regional Trial Court (RTC) of Manila, Branch 25, dated September 1, 2010 is hereby **AFFIRMED with MODIFICATION** of the penalty to which appellant is previously sentenced. Accordingly, he is now meted to suffer an indeterminate penalty of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

## **SO ORDERED.**<sup>[22]</sup>

Norberto filed a Motion for Reconsideration,<sup>[23]</sup> which the Court of Appeals denied in the Resolution dated June 3, 2013.<sup>[24]</sup>

Norberto filed a Petition for Review on Certiorari before this court. The People of the Philippines, through the Office of the Solicitor General, filed a Comment<sup>[25]</sup> to which Norberto filed a Reply.<sup>[26]</sup>

Norberto argues that the first element of bigamy is absent in this case.<sup>[27]</sup> He presents as evidence a Certification<sup>[28]</sup> from the Office of the Civil Registrar of Imus, Cavite, which states that the Office has no record of the marriage license allegedly issued in his favor and his first wife, Gina. He argues that with no proof of existence of an essential requisite of marriage—the marriage license—the prosecution fails to establish the legality of his first marriage.<sup>[29]</sup>

In addition, Norberto claims that the legal dissolution of the first marriage is not an element of the crime of bigamy. According to Norberto, nothing in Article 349 of the Revised Penal Code that punishes bigamy mentions that requirement.<sup>[30]</sup> Stating that "[a]ny reasonable doubt must be resolved in favor of the accused[,]"<sup>[31]</sup> Norberto prays for his acquittal.<sup>[32]</sup>

The prosecution counters that it has proven the existence of Norberto's prior valid marriage with Gina as evidenced by the marriage contract they had executed. The prosecution likewise proved that the first marriage of Norberto with Gina was not legally dissolved; that while his first marriage was subsisting, Norberto contracted a second marriage with Alice; and that the second marriage would have been valid had it not been for the existence of the first. Norberto, therefore, should be convicted of bigamy.<sup>[33]</sup>

The issue for our resolution is whether the Certification from the Office of the Civil Registrar that it has no record of the marriage license issued to petitioner Norberto A. Vitangcol and his first wife Gina proves the nullity of petitioner's first marriage and exculpates him from the bigamy charge.

The Certification from the Office of the Civil Registrar that it has no record of the marriage license is suspect. Assuming that it is true, it does not categorically prove that there was no marriage license. Furthermore, marriages are not dissolved through mere certifications by the civil registrar. For more than seven (7) years before his second marriage, petitioner did nothing to have his alleged spurious first marriage declared a nullity. Even when this case was pending, he did not present any decision from any trial court nullifying his first marriage.

## I

Bigamy is punished under Article 349 of the Revised Penal Code:

ARTICLE 349. Bigamy. - The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage

before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

For an accused to be convicted of this crime, the prosecution must prove all of the following elements:

[first,] that the offender has been legally married;

[second,] that the first marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code;

[third,] that he contracts a second or subsequent marriage; and

[lastly,] that the second or subsequent marriage has all the essential requisites for validity.<sup>[34]</sup>

The prosecution allegedly fails to prove the validity of his first marriage with Gina because the civil registrar of the municipality where they were married had no record of the marriage license allegedly issued in their favor.

Contrary to petitioner's claim, all the elements of bigamy are present in this case. Petitioner was still legally married to Gina when he married Alice. Thus, the trial court correctly convicted him of the crime charged.

Based on the marriage contract presented in evidence, petitioner's first marriage was solemnized on July 17, 1987. This was before the Family Code of the Philippines became effective on August 3, 1988.<sup>[35]</sup> Consequently, provisions of the Civil Code of the Philippines<sup>[36]</sup> govern the validity of his first marriage.

Article 53 of the Civil Code enumerates the requisites of marriage, the absence of any of which renders the marriage void from the beginning:<sup>[37]</sup>

Article 53. No marriage shall be solemnized unless all these requisites are complied with:

- (1) Legal capacity of the contracting parties;
- (2) Their consent, freely given;
- (3) Authority of the person performing the marriage; and
- (4) A marriage license, except in a marriage of exceptional character.

The fourth requisite—the marriage license—is issued by the local civil registrar of the municipality where either contracting party habitually resides.<sup>[38]</sup> The marriage license represents the state's "involvement and participation in every marriage, in the maintenance of which the general public is interested."<sup>[39]</sup>

To prove that a marriage was solemnized without a marriage license, "the law requires that the absence of such marriage license must be apparent on the

marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties."<sup>[40]</sup>

Petitioner presents a Certification from the Office of the Civil Registrar of Imus, Cavite, which states:

[A]fter a diligent search on the files of Registry Book on Application for Marriage License and License Issuance available in this office, no record could be found on the alleged issuance of this office of Marriage License No. 8683519 in favor of MR. NORBERTO A. VITANGCOL and MS. GINA M. GAERLAN dated July 17, 1987.<sup>[41]</sup>

This Certification does not prove that petitioner's first marriage was solemnized without a marriage license. It does not categorically state that Marriage License No. 8683519 does not exist.<sup>[42]</sup>

Moreover, petitioner admitted the authenticity of his signature appearing on the marriage contract between him and his first wife, Gina.<sup>[43]</sup> The marriage contract between petitioner and Gina is a positive piece of evidence as to the existence of petitioner's first marriage.<sup>[44]</sup> This "should be given greater credence than documents testifying merely as to [the] absence of any record of the marriage[.]"<sup>[45]</sup>

*Republic v. Court of Appeals and Castro*<sup>[46]</sup> was originally an action for the declaration of nullity of a marriage.<sup>[47]</sup> As part of its evidence, the plaintiff presented a certification that states that the marriage license "cannot be located as said license . . . does not appear from [the local civil registrar's] records."<sup>[48]</sup>

This court held that "[t]he certification . . . enjoys probative value, [the local civil registrar] being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license."<sup>[49]</sup> This court further said that "[u]naccompanied by any circumstance of suspicion and pursuant to Section 29, Rule 132 of the Rules of Court, a certificate of 'due search and inability to find' sufficiently proved that [the local civil registrar] did not issue [a] marriage license . . . to the contracting parties."<sup>[50]</sup>

The circumstances in *Castro* and in this case are different. *Castro* involved a civil case for declaration of nullity of marriage that does not involve the possible loss of liberty. The certification in *Castro* was unaccompanied by any circumstance of suspicion, there being no prosecution for bigamy involved. On the other hand, the present case involves a criminal prosecution for bigamy. To our mind, this is a circumstance of suspicion, the Certification having been issued to Norberto for him to evade conviction for bigamy.

The appreciation of the probative value of the certification cannot be divorced from the purpose of its presentation, the cause of action in the case, and the context of the presentation of the certification in relation to the other evidence presented in the case. We are not prepared to establish a doctrine that a certification that a marriage license cannot be found may substitute for a definite statement that no such license existed or was issued. Definitely, the Office of the Civil Registrar of