

SECOND DIVISION

[G.R. NO. 165842, November 29, 2005]

EDUARDO P. MANUEL, PETITIONER, VS. PROMULGATED: PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 26877, affirming the Decision^[2] of the Regional Trial Court (RTC) of Baguio City, Branch 3, convicting Eduardo P. Manuel of bigamy in Criminal Case No. 19562-R.

Eduardo was charged with bigamy in an Information filed on November 7, 2001, the accusatory portion of which reads:

That on or about the 22nd day of April, 1996, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused EDUARDO P. MANUEL, being then previously and legally married to RUBYLUS [GAÑA] and without the said marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second marriage with TINA GANDALERA-MANUEL, herein complainant, who does not know the existence of the first marriage of said EDUARDO P. MANUEL to Rubylus [Gaña].

CONTRARY TO LAW. ^[3]

The prosecution adduced evidence that on July 28, 1975, Eduardo was married to Rubylus Gaña before Msgr. Feliciano Santos in Makati, which was then still a municipality of the Province of Rizal.^[4] He met the private complainant Tina B. Gandalera in Dagupan City sometime in January 1996. She stayed in Bonuan, Dagupan City for two days looking for a friend. Tina was then 21 years old, a Computer Secretarial student, while Eduardo was 39. Afterwards, Eduardo went to Baguio City to visit her. Eventually, as one thing led to another, they went to a motel where, despite Tina's resistance, Eduardo succeeded in having his way with her. Eduardo proposed marriage on several occasions, assuring her that he was single. Eduardo even brought his parents to Baguio City to meet Tina's parents, and was assured by them that their son was still single.

Tina finally agreed to marry Eduardo sometime in the first week of March 1996. They were married on April 22, 1996 before Judge Antonio C. Reyes, the Presiding Judge of the RTC of Baguio City, Branch 61.^[5] It appeared in their marriage contract that Eduardo was "single."

The couple was happy during the first three years of their married life. Through

their joint efforts, they were able to build their home in Cypress Point, Irisan, Baguio City. However, starting 1999, Manuel started making himself scarce and went to their house only twice or thrice a year. Tina was jobless, and whenever she asked money from Eduardo, he would slap her.^[6] Sometime in January 2001, Eduardo took all his clothes, left, and did not return. Worse, he stopped giving financial support.

Sometime in August 2001, Tina became curious and made inquiries from the National Statistics Office (NSO) in Manila where she learned that Eduardo had been previously married. She secured an NSO-certified copy of the marriage contract.^[7] She was so embarrassed and humiliated when she learned that Eduardo was in fact already married when they exchanged their own vows.^[8]

For his part, Eduardo testified that he met Tina sometime in 1995 in a bar where she worked as a Guest Relations Officer (GRO). He fell in love with her and married her. He informed Tina of his previous marriage to Rubylus Gaña, but she nevertheless agreed to marry him. Their marital relationship was in order until this one time when he noticed that she had a "love-bite" on her neck. He then abandoned her. Eduardo further testified that he declared he was "single" in his marriage contract with Tina because he believed in good faith that his first marriage was invalid. He did not know that he had to go to court to seek for the nullification of his first marriage before marrying Tina.

Eduardo further claimed that he was only forced to marry his first wife because she threatened to commit suicide unless he did so. Rubylus was charged with *estafa* in 1975 and thereafter imprisoned. He visited her in jail after three months and never saw her again. He insisted that he married Tina believing that his first marriage was no longer valid because he had not heard from Rubylus for more than 20 years.

After trial, the court rendered judgment on July 2, 2002 finding Eduardo guilty beyond reasonable doubt of bigamy. He was sentenced to an indeterminate penalty of from six (6) years and ten (10) months, as minimum, to ten (10) years, as maximum, and directed to indemnify the private complainant Tina Gandalera the amount of P200,000.00 by way of moral damages, plus costs of suit.^[9]

The trial court ruled that the prosecution was able to prove beyond reasonable doubt all the elements of bigamy under Article 349 of the Revised Penal Code. It declared that Eduardo's belief, that his first marriage had been dissolved because of his first wife's 20-year absence, even if true, did not exculpate him from liability for bigamy. Citing the ruling of this Court in *People v. Bitdu*,^[10] the trial court further ruled that even if the private complainant had known that Eduardo had been previously married, the latter would still be criminally liable for bigamy.

Eduardo appealed the decision to the CA. He alleged that he was not criminally liable for bigamy because when he married the private complainant, he did so in good faith and without any malicious intent. He maintained that at the time that he married the private complainant, he was of the honest belief that his first marriage no longer subsisted. He insisted that conformably to Article 3 of the Revised Penal Code, there must be malice for one to be criminally liable for a felony. He was not motivated by malice in marrying the private complainant because he did so only out of his overwhelming desire to have a fruitful marriage. He posited that the trial

court should have taken into account Article 390 of the New Civil Code. To support his view, the appellant cited the rulings of this Court in *United States v. Peñalosa*^[11] and *Manahan, Jr. v. Court of Appeals*.^[12]

The Office of the Solicitor General (OSG) averred that Eduardo's defense of good faith and reliance on the Court's ruling in *United States v. Enriquez*^[13] were misplaced; what is applicable is Article 41 of the Family Code, which amended Article 390 of the Civil Code. Citing the ruling of this Court in *Republic v. Nolasco*,^[14] the OSG further posited that as provided in Article 41 of the Family Code, there is a need for a judicial declaration of presumptive death of the absent spouse to enable the present spouse to marry. Even assuming that the first marriage was void, the parties thereto should not be permitted to judge for themselves the nullity of the marriage; the matter should be submitted to the proper court for resolution. Moreover, the OSG maintained, the private complainant's knowledge of the first marriage would not afford any relief since bigamy is an offense against the State and not just against the private complainant.

However, the OSG agreed with the appellant that the penalty imposed by the trial court was erroneous and sought the affirmance of the decision appealed from with modification.

On June 18, 2004, the CA rendered judgment affirming the decision of the RTC with modification as to the penalty of the accused. It ruled that the prosecution was able to prove all the elements of bigamy. Contrary to the contention of the appellant, Article 41 of the Family Code should apply. Before Manuel could lawfully marry the private complainant, there should have been a judicial declaration of Gaña's presumptive death as the absent spouse. The appellate court cited the rulings of this Court in *Mercado v. Tan*^[15] and *Domingo v. Court of Appeals*^[16] to support its ruling. The dispositive portion of the decision reads:

WHEREFORE, in the light of the foregoing, the Decision promulgated on July 31, 2002 is hereby **MODIFIED** to reflect, as it hereby reflects, that accused-appellant is sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to ten (10) years of *prision mayor* as maximum. Said Decision is **AFFIRMED** in all other respects.

SO ORDERED.^[17]

Eduardo, now the petitioner, filed the instant petition for review on certiorari, insisting that:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW WHEN IT RULED THAT PETITIONER'S FIRST WIFE CANNOT BE LEGALLY PRESUMED DEAD UNDER ARTICLE 390 OF THE CIVIL CODE AS THERE WAS NO JUDICIAL DECLARATION OF PRESUMPTIVE DEATH AS PROVIDED FOR UNDER ARTICLE 41 OF THE FAMILY CODE.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW WHEN IT AFFIRMED THE AWARD OF PHP200,000.00 AS MORAL DAMAGES AS IT HAS NO BASIS IN FACT AND IN LAW.^[18]

The petitioner maintains that the prosecution failed to prove the second element of the felony, *i.e.*, that the marriage has not been legally dissolved or, in case his/her spouse is absent, the absent spouse could not yet be presumed dead under the Civil Code. He avers that when he married Gandalera in 1996, Gaña had been "absent" for 21 years since 1975; under Article 390 of the Civil Code, she was presumed dead as a matter of law. He points out that, under the first paragraph of Article 390 of the Civil Code, one who has been absent for seven years, whether or not he/she is still alive, shall be presumed dead *for all purposes* except for succession, while the second paragraph refers to the rule on legal presumption of death with respect to succession.

The petitioner asserts that the presumptive death of the absent spouse arises by operation of law upon the satisfaction of two requirements: the specified period and the present spouse's reasonable belief that the absentee is dead. He insists that he was able to prove that he had not heard from his first wife since 1975 and that he had no knowledge of her whereabouts or whether she was still alive; hence, under Article 41 of the Family Code, the presumptive death of Gaña had arisen by operation of law, as the two requirements of Article 390 of the Civil Code are present. The petitioner concludes that he should thus be acquitted of the crime of bigamy.

The petitioner insists that except for the period of absences provided for in Article 390 of the Civil Code, the rule therein on legal presumptions remains valid and effective. Nowhere under Article 390 of the Civil Code does it require that there must first be a judicial declaration of death before the rule on presumptive death would apply. He further asserts that contrary to the rulings of the trial and appellate courts, the requirement of a judicial declaration of presumptive death under Article 41 of the Family Code is only a requirement for the validity of the subsequent or second marriage.

The petitioner, likewise, avers that the trial court and the CA erred in awarding moral damages in favor of the private complainant. The private complainant was a "GRO" before he married her, and even knew that he was already married. He genuinely loved and took care of her and gave her financial support. He also pointed out that she had an illicit relationship with a lover whom she brought to their house.

In its comment on the petition, the OSG maintains that the decision of the CA affirming the petitioner's conviction is in accord with the law, jurisprudence and the evidence on record. To bolster its claim, the OSG cited the ruling of this Court in *Republic v. Nolasco*.^[19]

The petition is denied for lack of merit.

Article 349 of the Revised Penal Code, which defines and penalizes bigamy, reads:

Art. 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.

The provision was taken from Article 486 of the Spanish Penal Code, to wit:

El que contrajere Segundo o ulterior matrimonio sin hallarse legítimamente disuelto el anterior, será castigado con la pena de prision mayor. xxx

The reason why bigamy is considered a felony is to preserve and ensure the juridical tie of marriage established by law.^[20] The phrase "or before the absent spouse had been declared presumptively dead by means of a judgment rendered in the proper proceedings" was incorporated in the Revised Penal Code because the drafters of the law were of the impression that "in consonance with the civil law which provides for the presumption of death after an absence of a number of years, **the judicial declaration of presumed death like annulment of marriage** should be a justification for bigamy."^[21]

For the accused to be held guilty of bigamy, the prosecution is burdened to prove the felony: (a) he/she has been legally married; and (b) he/she contracts a subsequent marriage without the former marriage having been lawfully dissolved. The felony is consummated on the celebration of the second marriage or subsequent marriage.^[22] It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage.^[23] Viada avers that a third element of the crime is that the second marriage must be entered into with fraudulent intent (*intencion fraudulente*) which is an essential element of a felony by *dolo*.^[24] On the other hand, Cuello Calon is of the view that there are only two elements of bigamy: (1) the existence of a marriage that has not been lawfully dissolved; and (2) the celebration of a second marriage. It does not matter whether the first marriage is void or voidable because such marriages have juridical effects until lawfully dissolved by a court of competent jurisdiction.^[25] As the Court ruled in *Domingo v. Court of Appeals*^[26] and *Mercado v. Tan*,^[27] under the Family Code of the Philippines, the judicial declaration of nullity of a previous marriage is a defense.

In his commentary on the Revised Penal Code, Albert is of the same view as Viada and declared that there are three (3) elements of bigamy: (1) an undissolved marriage; (2) a new marriage; and (3) fraudulent intention constituting the felony of the act.^[28] He explained that:

... This last element is not stated in Article 349, because it is undoubtedly incorporated in the principle antedating all codes, and, constituting one of the landmarks of our Penal Code, that, where there is no willfulness there is no crime. There is no willfulness if the subject believes that the former marriage has been dissolved; and this must be supported by very strong evidence, and if this be produced, the act shall be deemed not to constitute a crime. Thus, a person who contracts a second marriage in the reasonable and well-founded belief that his first wife is dead, because