

EN BANC

[G.R. No. 150758, February 18, 2004]

**VERONICO TENEBRO, PETITIONER, VS. THE HONORABLE COURT
OF APPEALS, RESPONDENT.**

DECISION

YNARES-SATIAGO, J.:

We are called on to decide the novel issue concerning the effect of the judicial declaration of the nullity of a second or subsequent marriage, on the ground of psychological incapacity, on an individual's criminal liability for bigamy. We hold that the subsequent judicial declaration of nullity of marriage on the ground of psychological incapacity does not retroact to the date of the celebration of the marriage insofar as the Philippines' penal laws are concerned. As such, an individual who contracts a second or subsequent marriage during the subsistence of a valid marriage is criminally liable for bigamy, notwithstanding the subsequent declaration that the second marriage is void *ab initio* on the ground of psychological incapacity.

Petitioner in this case, Veronica Tenebro, contracted marriage with private complainant Leticia Ancajas on April 10, 1990. The two were wed by Judge Alfredo B. Perez, Jr. of the City Trial Court of Lapu-lapu City. Tenebro and Ancajas lived together continuously and without interruption until the latter part of 1991, when Tenebro informed Ancajas that he had been previously married to a certain Hilda Villareyes on November 10, 1986. Tenebro showed Ancajas a photocopy of a marriage contract between him and Villareyes. Invoking this previous marriage, petitioner thereafter left the conjugal dwelling which he shared with Ancajas, stating that he was going to cohabit with Villareyes.^[1]

On January 25, 1993, petitioner contracted yet another marriage, this one with a certain Nilda Villegas, before Judge German Lee, Jr. of the Regional Trial Court of Cebu City, Branch 15.^[2] When Ancajas learned of this third marriage, she verified from Villareyes whether the latter was indeed married to petitioner. In a handwritten letter,^[3] Villareyes confirmed that petitioner, Veronica Tenebro, was indeed her husband.

Ancajas thereafter filed a complaint for bigamy against petitioner.^[4] The Information,^[5] which was docketed as Criminal Case No. 013095-L, reads:

That on the 10th day of April 1990, in the City of Lapu-lapu, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, having been previously united in lawful marriage with Hilda Villareyes, and without the said marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second marriage with LETICIA ANCAJAS, which second or subsequent marriage of the accused has all the essential requisites for validity were it not for

the subsisting first marriage.

CONTRARY TO LAW.

When arraigned, petitioner entered a plea of “not guilty”.[6]

During the trial, petitioner admitted having cohabited with Villareyes from 1984-1988, with whom he sired two children. However, he denied that he and Villareyes were validly married to each other, claiming that no marriage ceremony took place to solemnize their union.[7] He alleged that he signed a marriage contract merely to enable her to get the allotment from his office in connection with his work as a seaman.[8] He further testified that he requested his brother to verify from the Civil Register in Manila whether there was any marriage at all between him and Villareyes, but there was no record of said marriage.[9]

On November 10, 1997, the Regional Trial Court of Lapu-lapu City, Branch 54, rendered a decision finding the accused guilty beyond reasonable doubt of the crime of bigamy under Article 349 of the Revised Penal Code, and sentencing him to four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.[10] On appeal, the Court of Appeals affirmed the decision of the trial court. Petitioner’s motion for reconsideration was denied for lack of merit.

Hence, the instant petition for review on the following assignment of errors:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED, AND THIS ERROR IS CORRECTIBLE IN THIS APPEAL — WHEN IT AFFIRMED THE DECISION OF THE HONORABLE COURT A QUO CONVICTING THE ACCUSED FOR (*sic*) THE CRIME OF BIGAMY, DESPITE THE NON-EXISTENCE OF THE FIRST MARRIAGE AND INSUFFICIENCY OF EVIDENCE.

II. THE COURT ERRED IN CONVICTING THE ACCUSED FOR (*sic*) THE CRIME OF BIGAMY DESPITE CLEAR PROOF THAT THE MARRIAGE BETWEEN THE ACCUSED AND PRIVATE COMPLAINANT HAD BEEN DECLARED NULL AND VOID *AB INITIO* AND WITHOUT LEGAL FORCE AND EFFECT.[11]

After a careful review of the evidence on record, we find no cogent reason to disturb the assailed judgment.

Under Article 349 of the Revised Penal Code, the elements of the crime of Bigamy are:

- (1) that the offender has been legally married;
- (2) 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;
- (3) that he contracts a second or subsequent marriage; and
- (4) that the second or subsequent marriage has all the essential requisites for validity.[12]

Petitioner's assignment of errors presents a two-tiered defense, in which he (1) denies the existence of his first marriage to Villareyes, and (2) argues that the declaration of the nullity of the second marriage on the ground of psychological incapacity, which is an alleged indicator that his marriage to Ancajas lacks the essential requisites for validity, retroacts to the date on which the second marriage was celebrated.^[13] Hence, petitioner argues that all four of the elements of the crime of bigamy are absent, and prays for his acquittal.^[14]

Petitioner's defense must fail on both counts.

First, the prosecution presented sufficient evidence, both documentary and oral, to prove the existence of the first marriage between petitioner and Villareyes. Documentary evidence presented was in the form of: (1) a copy of a marriage contract between Tenebro and Villareyes, dated November 10, 1986, which, as seen on the document, was solemnized at the Manila City Hall before Rev. Julierto Torres, a Minister of the Gospel, and certified to by the Office of the Civil Registrar of Manila;^[15] and (2) a handwritten letter from Villareyes to Ancajas dated July 12, 1994, informing Ancajas that Villareyes and Tenebro were legally married.^[16]

To assail the veracity of the marriage contract, petitioner presented (1) a certification issued by the National Statistics Office dated October 7, 1995;^[17] and (2) a certification issued by the City Civil Registry of Manila, dated February 3, 1997.^[18] Both these documents attest that the respective issuing offices have no record of a marriage celebrated between Veronico B. Tenebro and Hilda B. Villareyes on November 10, 1986.

To our mind, the documents presented by the defense cannot adequately assail the marriage contract, which in itself would already have been sufficient to establish the existence of a marriage between Tenebro and Villareyes.

All three of these documents fall in the category of *public documents*, and the Rules of Court provisions relevant to public documents are applicable to all. Pertinent to the marriage contract, Section 7 of Rule 130 of the Rules of Court reads as follows:

Sec. 7. Evidence admissible when original document is a public record. —
When the original of a document is in the custody of a public officer or is recorded in a public office, **its contents may be proved by a certified copy issued by the public officer in custody thereof** (Emphasis ours).

This being the case, the certified copy of the marriage contract, issued by a public officer in custody thereof, was admissible as the best evidence of its contents. The marriage contract plainly indicates that a marriage was celebrated between petitioner and Villareyes on November 10, 1986, and it should be accorded the full faith and credence given to public documents.

Moreover, an examination of the wordings of the certification issued by the National Statistics Office on October 7, 1995 and that issued by the City Civil Registry of Manila on February 3, 1997 would plainly show that *neither document attests as a positive fact that there was no marriage celebrated* between Veronico B. Tenebro and Hilda B. Villareyes on November 10, 1986. Rather, the documents merely attest

that the respective issuing offices have no record of such a marriage. Documentary evidence as to the *absence of a record* is quite different from documentary evidence as to the *absence of a marriage ceremony*, or documentary evidence as to *the invalidity of the marriage between Tenebro and Villareyes*.

The marriage contract presented by the prosecution serves as positive evidence as to the existence of the marriage between Tenebro and Villareyes, which should be given greater credence than documents testifying merely as to *absence of any record of the marriage*, especially considering that there is absolutely no requirement in the law that a marriage contract needs to be submitted to the civil registrar as a condition precedent for the validity of a marriage. The mere fact that no record of a marriage exists does not invalidate the marriage, provided all requisites for its validity are present.^[19] There is no evidence presented by the defense that would indicate that the marriage between Tenebro and Villareyes lacked any requisite for validity, apart from the self-serving testimony of the accused himself. Balanced against this testimony are Villareyes' letter, Ancajas' testimony that petitioner informed her of the existence of the valid first marriage, and petitioner's own conduct, which would all tend to indicate that the first marriage had all the requisites for validity.

Finally, although the accused claims that he took steps to verify the non-existence of the first marriage to Villareyes by requesting his brother to validate such purported non-existence, it is significant to note that the certifications issued by the National Statistics Office and the City Civil Registry of Manila are dated October 7, 1995 and February 3, 1997, respectively. Both documents, therefore, are dated *after* the accused's marriage to his second wife, private respondent in this case.

As such, this Court rules that there was sufficient evidence presented by the prosecution to prove the first and second requisites for the crime of bigamy.

The second tier of petitioner's defense hinges on the effects of the subsequent judicial declaration^[20] of the nullity of the second marriage on the ground of psychological incapacity.

Petitioner argues that this subsequent judicial declaration retroacts to the date of the celebration of the marriage to Ancajas. As such, he argues that, since his marriage to Ancajas was subsequently declared void *ab initio*, the crime of bigamy was not committed.^[21]

This argument is not impressed with merit.

Petitioner makes much of the judicial declaration of the nullity of the second marriage on the ground of psychological incapacity, invoking Article 36 of the Family Code. What petitioner fails to realize is that a declaration of the nullity of the second marriage on the ground of psychological incapacity is of absolutely no moment insofar as the State's penal laws are concerned.

As a second or subsequent marriage contracted during the subsistence of petitioner's valid marriage to Villareyes, petitioner's marriage to Ancajas would be null and void *ab initio* completely regardless of petitioner's psychological capacity or incapacity.^[22] Since a marriage contracted during the subsistence of a valid

marriage is *automatically* void, the nullity of this second marriage is not *per se* an argument for the avoidance of criminal liability for bigamy. Pertinently, Article 349 of the Revised Penal Code criminalizes “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”. A plain reading of the law, therefore, would indicate that the provision penalizes *the mere act of contracting a second or a subsequent marriage during the subsistence of a valid marriage*.

Thus, as soon as the second marriage to Ancajas was celebrated on April 10, 1990, during the subsistence of the valid first marriage, the crime of bigamy *had already been consummated*. To our mind, there is no cogent reason for distinguishing between a subsequent marriage that is null and void purely *because* it is a second or subsequent marriage, and a subsequent marriage that is null and void on the ground of psychological incapacity, at least insofar as criminal liability for bigamy is concerned. The State’s penal laws protecting the institution of marriage are in recognition of the sacrosanct character of this special contract between spouses, and punish an individual’s deliberate disregard of the permanent character of the special bond between spouses, which petitioner has undoubtedly done.

Moreover, the declaration of the nullity of the second marriage on the ground of psychological incapacity is *not* an indicator that petitioner’s marriage to Ancajas lacks the essential requisites for validity. The requisites for the validity of a marriage are classified by the Family Code into essential (legal capacity of the contracting parties and their consent freely given in the presence of the solemnizing officer)^[23] and formal (authority of the solemnizing officer, marriage license, and marriage ceremony wherein the parties personally declare their agreement to marry before the solemnizing officer in the presence of at least two witnesses).^[24] Under Article 5 of the Family Code, any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37^[25] and 38^[26] may contract marriage.^[27]

In this case, all the essential and formal requisites for the validity of marriage were satisfied by petitioner and Ancajas. Both were over eighteen years of age, and they voluntarily contracted the second marriage with the required license before Judge Alfredo B. Perez, Jr. of the City Trial Court of Lapu-lapu City, in the presence of at least two witnesses.

Although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the *vinculum* between the spouses is concerned, it is significant to note that said marriage is not without legal effects. Among these effects is that children conceived or born before the judgment of absolute nullity of the marriage shall be considered legitimate.^[28] There is therefore a recognition *written into the law itself* that such a marriage, although void *ab initio*, may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State’s penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment.