

FIRST DIVISION

[G.R. No. 138509, July 31, 2000]

**IMELDA MARBELLA-BOBIS, PETITIONER, VS. ISAGANI D. BOBIS,
RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

On October 21, 1985, respondent contracted a first marriage with one Maria Dulce B. Javier. Without said marriage having been annulled, nullified or terminated, the same respondent contracted a second marriage with petitioner Imelda Marbella-Bobis on January 25, 1996 and allegedly a third marriage with a certain Julia Sally Hernandez. Based on petitioner's complaint-affidavit, an information for bigamy was filed against respondent on February 25, 1998, which was docketed as Criminal Case No. Q98-75611 of the Regional Trial Court, Branch 226, Quezon City. Sometime thereafter, respondent initiated a civil action for the judicial declaration of absolute nullity of his first marriage on the ground that it was celebrated without a marriage license. Respondent then filed a motion to suspend the proceedings in the criminal case for bigamy invoking the pending civil case for nullity of the first marriage as a prejudicial question to the criminal case. The trial judge granted the motion to suspend the criminal case in an Order dated December 29, 1998.^[1] Petitioner filed a motion for reconsideration, but the same was denied.

Hence, this petition for review on *certiorari*. Petitioner argues that respondent should have first obtained a judicial declaration of nullity of his first marriage before entering into the second marriage, inasmuch as the alleged prejudicial question justifying suspension of the bigamy case is no longer a legal truism pursuant to Article 40 of the Family Code.^[2]

The issue to be resolved in this petition is whether the subsequent filing of a civil action for declaration of nullity of a previous marriage constitutes a prejudicial question to a criminal case for bigamy.

A prejudicial question is one which arises in a case the resolution of which is a logical antecedent of the issue involved therein.^[3] It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused.^[4] It must appear not only that the civil case involves facts upon which the criminal action is based, but also that the resolution of the issues raised in the civil action would necessarily be determinative of the criminal case.^[5] Consequently, the defense must involve an issue similar or intimately related to the same issue raised in the criminal action and its resolution determinative of whether or not the latter action may proceed.^[6] Its two essential elements are:^[7]

- (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and
- (b) the resolution of such issue determines whether or not the criminal action may proceed.

A prejudicial question does not conclusively resolve the guilt or innocence of the accused but simply tests the sufficiency of the allegations in the information in order to sustain the further prosecution of the criminal case. A party who raises a prejudicial question is deemed to have hypothetically admitted that all the essential elements of a crime have been adequately alleged in the information, considering that the prosecution has not yet presented a single evidence on the indictment or may not yet have rested its case. A challenge of the allegations in the information on the ground of prejudicial question is in effect a question on the merits of the criminal charge through a non-criminal suit.

Article 40 of the Family Code, which was effective at the time of celebration of the second marriage, requires a prior judicial declaration of nullity of a previous marriage before a party may remarry. The clear implication of this is that it is not for the parties, particularly the accused, to determine the validity or invalidity of the marriage.^[8] Whether or not the first marriage was void for lack of a license is a matter of defense because there is still no judicial declaration of its nullity at the time the second marriage was contracted. It should be remembered that bigamy can successfully be prosecuted provided all its elements concur - two of which are a previous marriage and a subsequent marriage which would have been valid had it not been for the existence at the material time of the first marriage.^[9]

In the case at bar, respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is to disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite - usually the marriage license - and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provisions on bigamy. As succinctly held in *Landicho v. Relova*:^[10]

(P)arties to a marriage should not be permitted to judge for themselves its nullity, only competent courts having such authority. Prior to such declaration of nullity, the validity of the first marriage is beyond question. A party who contracts a second marriage then assumes the risk of being prosecuted for bigamy.

Respondent alleges that the first marriage in the case before us was void for lack of a marriage license. Petitioner, on the other hand, argues that her marriage to respondent was exempt from the requirement of a marriage license. More specifically, petitioner claims that prior to their marriage, they had already attained the age of majority and had been living together as husband and wife for at least