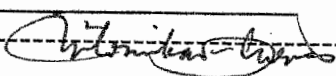


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G.R. No. 220149 – LUISITO G. PULIDO, *Petitioner* v. PEOPLE OF THE PHILIPPINES, *Respondent*.

Promulgated:

July 27, 2021

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CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur. Henceforth, contrary to previous rulings on the matter, persons should not anymore be convicted of the crime of Bigamy under Article 349 of the Revised Penal Code (RPC) if the prior and/or subsequent marriage¹ is a nullity, regardless of the date (*i.e.*, whether during the effectivity of the Civil Code or Family Code) of the marriage's celebration. As such, the nullity of the previous or subsequent marriage is a valid defense in every subsisting prosecution of the crime of Bigamy, which defense petitioner Luisito G. Pulido successfully proffered, and thus, warrants his acquittal.

To expound, the hornbook rule is that “[c]riminal and penal statutes must be **strictly construed**, that is, **they cannot be enlarged or extended by intentment, implication, or by any equitable considerations**. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. **Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute**, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought.”²

The letter of Article 349 of the RPC is as follows:

Article 349. *Bigamy*. – The penalty of *prisión mayor* shall be imposed upon **any person who shall contract a second or subsequent**

¹ Except second marriages that are null and void for being bigamous under civil law. Article 35 (4) of the Family Code reads:

Article 35. The following marriages shall be void from the beginning:

x x x x

(4) Those bigamous or polygamous marriages not falling under Article 41;

x x x x.

² *People v. Garcia*, 85 Phil. 651, 656 (1950); emphases and underscoring supplied.

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

In *Manuel v. People*,³ the Court observed that the Bigamy provision of the RPC was substantially lifted from the *Codigo Penal* of Spain which states: “*El que contrajere Segundo o ulterior matrimonio sin hallarse legítimamente disuelto el anterior, será castigado con la pena de prision mayor*”⁴ – or in English: “Anyone who contracts a second or subsequent marriage **without the previous one being legitimately dissolved** will be punished with the penalty of *prision mayor*.”⁵

Conceptually, null and void marriages are void from the very beginning. In contrast to valid and/or voidable marriages (which produce legal effects prior to their annulment), null and void marriages are, by their very nature, **legally inexistent and are considered to have not taken place**. Case law explains:

“Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts.” It is not like a voidable marriage which cannot be collaterally attacked except in direct proceeding instituted during the lifetime of the parties so that on the death of either, the marriage cannot be impeached, and is made good *ab initio*.⁶ (Emphasis and underscoring supplied)

The very wording of Article 349 of the RPC which criminalizes Bigamy clearly requires the existence of a “**former marriage [that] has [not] been legally dissolved**.” By its common acceptance, “to dissolve” is synonymous to “to terminate” or “to bring to an end.”⁷ Thus, as expressed by the letter of the provision itself, Article 349 never contemplated null and void marriages because there is nothing to dissolve in the first place.

A judicial declaration of nullity does not “legally dissolve” a null and void marriage, but *merely confirms* the status of the marriage as such.

³ 512 Phil. 818 (2005).

⁴ See *id.* at 833.

⁵ See

<<https://translate.google.com/?sl=auto&tl=en&text=El%20que%20contrajere%20Segundo%20o%20ulterior%20matrimonio%20sin%20hallarse%20leg%C3%83%C2%ADtimamente%20disuelto%20el%20anterior%2C%20ser%C3%83%C2%A1%20castigado%20con%20la%20pena%20de%20prision%20mayor&op=translate>> last accessed on July 23, 2021.

⁶ *Niñal v. Bayadog*, 384 Phil. 661, 674 (2000); citation omitted.

⁷ See definition of “dissolve” at <<https://www.merriam-webster.com/dictionary/dissolve>> last accessed on July 23, 2021

Furthermore, according to Eugenio Cuello Calon, a known scholar in criminal law, bigamy is penalized as a felony for **purposes of preserving and ensuring the juridical tie of marriage established by law.**⁸ However, when it comes to null and void marriages, there is no juridical tie to preserve because, in the first place, the juridical tie does not legally exist.

The spirit of Article 349 of the RPC, as derived from its legislative context, further confirms that null and void marriages were never intended to be included in its coverage.

As earlier intimated, Article 349 of the RPC was patterned after the *Codigo Penal* version of Bigamy. At the time the *Codigo Penal* was enacted, the contemporaneous law governing marriages was the Spanish Civil Code of 1889 (Spanish Civil Code). **Under the Spanish Civil Code, the dissolution of marriages may only be done either through annulment⁹ or divorce.¹⁰** Thus, insofar as the *Codigo Penal* version of Bigamy is concerned, the element of **“former marriage [that] has [not] been legally dissolved”** must have only contemplated two (2) types of marriages, namely: (a) voidable marriages, which may be dissolved by annulment; and (b) valid marriages, which may be dissolved by divorce. Having only been patterned after the counterpart provision of the *Codigo Penal*, Article 349 of the RPC must likewise be only construed to equally pertain to the same coverage, *i.e.*, voidable and valid marriages.

With the foregoing in mind, as well as following the statutory construction maxim of *in dubio pro reo*,¹¹ the *ponencia* thus correctly rules that a person who enters into a null and void marriage, and thereafter, enters into another marriage, should not be convicted of the crime of Bigamy under Article 349 of the RPC as the latter law only covers situations where the person’s previous marriage is either valid or voidable. In the same vein, a person who contracts a second or subsequent marriage which is null and void on the ground other than it being bigamous under civil law, shall also not incur criminal liability for Bigamy because the legal inexistence of the second or subsequent marriage would mean that “the element, ‘that [the accused] contracts a second or subsequent marriage’ is lacking.”¹² These novel interpretations are more consistent with the intent behind punishing Bigamy, *i.e.*, **the preservation of a juridical tie established by a valid marriage.**

⁸ See *Manuel v. People*, supra at 833; citing Eugenio Cuello Calon, *Derecho Penal Reformado*, Vol. V, p. 627.

⁹ See Articles 101 to 103 of the Spanish Civil Code of 1889.

¹⁰ See Articles 104 to 107 of the Spanish Civil Code of 1889.

¹¹ “*In dubio pro reo*. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused shall be presumed innocent until and unless his guilt is established beyond reasonable doubt.” (See J. Corona’s Separate Opinion in *People v. Temporada*, 594 Phil. 680, 742 [2000].)

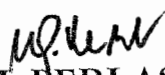
¹² *Ponencia*, p. 24.

As a final point, it should be stressed that the passage of Article 40¹³ of the Family Code, which requires a judicial declaration of nullity, is only for purposes of remarriage. Hence, since remarriage is a civil law process, this later requirement (passed only in 1987) should not in any way affect the distinct realm of criminal law, much more constitute an implied repeal or amendment of Article 349 of the RPC.

However, I deem it apt to highlight that the Court's present interpretation of Article 349 of the RPC creates a legal incongruence between the criminal law and civil law treatments of Bigamy. On one hand, insofar as criminal law is concerned, a person who contracted a first marriage which is void *ab initio*, and thereafter, contracted a second marriage, cannot be held criminally liable for Bigamy; whereas, on the other hand, under the lens of the Family Code, the second marriage will be considered void *ab initio* for being bigamous for failure to comply with the requirement stated in Article 40 thereof.

Despite this disparity, it nonetheless remains that Article 349 of the RPC has not been amended since its passage in 1930; hence, the Court is constrained to interpret and apply the same as written and intended. It is well-settled that the criminalization of acts is a policy matter that belongs to the legislative branch of the government. Therefore, the solution to bridge this apparent gap in our laws is remedial legislation, which is left to the Congress' prerogative.

ACCORDINGLY, petitioner should be **ACQUITTED**.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

¹³ Article 40. 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.