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G.R. No. 220149 (*Luisito G. Pulido v. People of the Philippines*)

Promulgated:
July 27, 2021

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CONCURRING OPINION

LAZARO-JAVIER, *J.*:

I humbly submit my views on the evolving jurisprudence on the first two elements of the crime of bigamy as defined and penalized in Article 349, of the *Revised Penal Code*.

Bigamy has been defined, as follows:

> ARTICLE 349. Bigamy. — The penalty of *prisión 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 elements of this crime are: (a) the offender has been legally married; (b) the 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 [Family Code]; (c) that he contracts a second or subsequent marriage; and (d) the second or subsequent marriage has all the essential requisites for validity.[1]

The first element of bigamy must be interpreted to allow an accused to prove reasonable doubt as to its existence in the same criminal case for bigamy where he or she is being tried.

A. Elements of Bigamy

The first two elements of bigamy are: (a) the offender has been **legally** married; (b) the 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 [Family Code]** .... For purposes of the present petition, they are the critical matters of substance we have to look into.

These first two elements of bigamy are derived from Article 349 which states in part "... **before** the former marriage has been **legally dissolved, *or***

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[1] *Sarto v. People*, 826 Phil. 745 (2018).

before the absent spouse has been declared presumptively dead by means of a **judgment rendered in the proper proceedings**."

B. Second Element of Bigamy – Legally Dissolved

What does **legally dissolved** mean? Dissolution is the act of bringing to an end.[2] Thus, "[u]nder contract law, dissolution is the cancellation or termination of a contract or other legal relationship by the parties. For example, dissolution of marriage."[3]

Dissolution is the result of any event or proceeding that **terminates the marital bond** – (i) a **marriage ended by divorce** obtained outside the Philippines where divorce is valid by the alien spouse,[4] (ii) **nullified marriage** due to the absence of the essential or formal elements of marriage,[5] or (iii) **annulled marriage** due to a defect in any of the essential requisites.[6]

The **second element** stresses the **legal** nature of the **dissolution**. This means that the **dissolution** should **not only be factual but also "that which is according to law,"**[7] **"deriving authority from or founded on law"** or **"established by law."**[8] Clearly, the **second element** of bigamy requires a **legal act** or **proceeding** that **terminates the marriage** *and* **proves its termination**.

Jurisprudence has it that a **marriage ended by divorce or annulment** should have been **already legally ended before** the second marriage was contracted. This **timeline** is **important** not only because it is mentioned in Article 349 but also because **prior to** the divorce or annulment, the married person has just **no capacity to marry**.

On the other hand, jurisprudence has **vacillated** with respect to **null marriages**. There are intertwined **two issues**:

(i) How and in what proceeding does one prove a **null marriage**?

(ii) Must the marriage be already **nullified before** the second marriage was contracted?

On the **first issue**, one school of thought equates a **null marriage** with a **marriage ended by divorce** or an **annulled marriage**. In the case of the last two, they **require a direct proceeding for this purpose**. For there is **simply no remedy recognized in** and **by law** whereby divorce or annulment

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[2] US Legal, US Legal.com at https://definitions.uslegal.com/d/dissolution/ (last accessed July 2, 2021).
[3] *Id.*
[4] *Sarto v. People*, supra note 1.
[5] See e.g., Family Code, Articles 4, 35-38, 41, 40 in relation to 53.
[6] *Id.*, Articles 4, 45.
[7] The Free Dictionary by Farlex at https://legal-dictionary.thefreedictionary.com/legal (last accessed on July 2, 2021).
[8] Merriam-Webster at https://www.merriam-webster.com/dictionary/legal (last accessed on July 2, 2021).

is granted as a collateral issue in a proceeding principally involving another matter. This school of thought extends the rule to **null marriages** on account of Article 40, *Family Code*,[9] which states:

> 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. (n)

Another school of thought believes that a **null marriage need not be proved** by a **judicial declaration of nullity of this marriage**.[10] The **null marriage** may be **declared as such** in the same proceeding where such declaration is necessary to determine the principal issue, such as in a criminal proceeding for bigamy – the declaration being merely for the purpose of determining the presence of the first two elements of this crime.

On the **second issue**, one school of thought holds that a **null marriage** ought **already to be a legally determined fact prior to** the celebration of the second marriage.[11] This means that the **nullity cannot be proved during** the trial of the bigamy case but **must be shown by** a **judicial decree of nullity obtained elsewhere**.

A variation of this school of thought believes that **it does not matter** that the **judicial decree of nullity** was **obtained after** the celebration of the second marriage or even after the institution of the criminal case for bigamy,[12] since its effect retroacts to the legally fictional beginning of time.

The opposing school of thought **rejects** altogether the idea that a **judicial decree** is the **sole** proof of a **null marriage** or that **nullity cannot be proved** in the same criminal case for bigamy. This school of thought champions the idea that (i) **nullity can be established in the same criminal case for bigamy** by evidence relevant to the claim of nullity, (ii) this **nullity** has the **effect of proving that there was no valid marriage** since the beginning of time, and (iii) thus it **does not matter** when the marriage is adjudged to be null whether before or after the second marriage was contracted.[13]

C. Justice Caguioa's Reflections

For his articulate and excellently argued *reflections*, the revered Justice Caguioa opines that a **null marriage** can be established in the **same proceeding** where the criminal case for bigamy is being tried. This means that a **judicial declaration of nullity of marriage** is **not necessary** to disprove elements one and two of bigamy. This supports the conclusion that on the basis of the meaning of Article 40 of the *Family Code* derived from both its

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[9] See e.g., *Vitangcol v. People*, 778 Phil. 326 (2016).
[10] See e.g., *Castillo v. De Leon Castillo*, 784 Phil 667 (2016); *People v. Aragon*, 100 Phil. 1033 (1957).
[11] See e.g., *Vitangcol v. People*, supra note 9.
[12] See e.g., the *ponencia*.
[13] See e.g., *People v. Mendoza*, 95 Phil. 845 (1954).

text and original meaning – this **judicial declaration** is **essential** only for purposes of remarriage, not for defending oneself in a bigamy case.

D. My Reflections

The starting point in understanding the crime of bigamy, as in other crimes, is the **basic rule of statutory construction** that *penal statutes are to be liberally construed in favor of the accused* and that *every reasonable doubt must then be resolved in favor of the accused.* This means that:

> .... the courts must **not bring cases within the provision of a law that are not clearly embraced by it**. In short, **no act can be pronounced criminal unless it is clearly made so by statute prior to its commission** (*nullum crimen, nulla poena, sine lege*). So, too, **no person who is not clearly within the terms of a statute can be brought within them.**[14]

The **analytical tool** refers to the **words defining the crime** and the **elements** of the crime inferred from these words. Hence, to determine one's liability for bigamy or any other crime, the **acts and omissions** attributed to the accused must be **matched** to the **text** of the penal law itself. The analysis **must center** on each of the elements of the crime. More, **every element** of the crime corresponding to its definition in the statute must be **established beyond reasonable doubt.**

I respectfully submit that our discourse here ought to focus on the **first element** of bigamy – *the offender has been **legally** married; in other words, the **prior** marriage must be **valid**.* This **first element** must be interpreted to **allow an accused to prove reasonable doubt as to its existence** in the **same criminal case for bigamy** where this accused is being tried.

Let me expound:

One. I agree that the **text itself of Article 40** of the *Family Code* does **not** support the view that an accused charged with bigamy must prove the **judicial declaration** of nullity of the first marriage to be exculpated of this crime. It **expressly requires** the judicial declaration **only** for the **purpose of remarriage.**

Should this requirement be extended to a **criminal** prosecution for bigamy? There is **nothing in the text** to support making such an inference.

The text does **not** say *and others* or *including remarriage* to signal that the requirement can be demanded in **other unmentioned** circumstances.

Indeed –

> It is a settled rule of statutory construction that the **express mention of one person, thing, or consequence implies the exclusion of all others**.

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[14] *Causing v. Commission on Elections*, 742 Phil. 539 (2014).

> The rule is expressed in the familiar maxim, *expressio unius est exclusio alterius*.
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> The rule of *expressio unius est exclusio alterius* is formulated in a number of ways. One variation of the rule is the principle that **what is expressed puts an end to that which is implied**. *Expressum facit cessare tacitum*. Thus, **where a statute, by its terms, is expressly limited to certain matters, it may not**, by interpretation or construction, **be extended to other matters**.[15]

This ordinary and precise meaning of the text of Article 40 is **bolstered by the two gentlemen's reference to the original intent** of its framers behind this provision – which is to require the judicial declaration only for purposes of remarriage.

A **further boost** to this understanding of Article 40 is Article 53, *Family Code*, which declares a subsequent marriage void if it is **celebrated without the judgment of absolute nullity** of the prior marriage. Article 53 proves that Article 40 **relates solely to the event of a remarriage, not to the crime of bigamy or a criminal case for this crime** or any other crime for that matter.

Two. If at all, the requirement of a **judicial declaration** is found in the **second element** of bigamy – "the 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 [Family Code]**," which is derived from Article 349's "... **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**."

In the case of an **absent spouse**, Article 349 **expressly** requires a **negative averment** and **proof** of a **court declaration of absence** or **presumptive death** prior to the celebration of the subsequent marriage.

In **other situations** involving **null marriages**, what Article 349 **expressly** requires is a **negative averment** and **proof** of the **legal dissolution** of the prior marriage obtained before the celebration of the subsequent marriage.

Legal dissolution happens only when there is a **formal declaration** to that effect. **That declaration** can only be made by a **court of law**.

To be sure, **legal dissolution** will **not occur** if the **declaration** is done only collaterally, such as when the **cause** of the legal dissolution is raised as a defense to some action.

For example, a marriage is **not legally dissolved** when a court declares who the heirs of a deceased are **even though** the court declares the marriage

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[15] *Malinias v. Commission on Elections*, 439 Phil. 326, 335 (2002).

to be void in the course of that action, as the declaration was made **only to resolve** the principal issue of determining the identities of the deceased's heirs.

To illustrate further, in a criminal case for bigamy, a court's declaration that the prior marriage is void **does not mean** that the prior marriage has been "**legally dissolved.**" The declaration was **made solely to resolve** the presence or absence of this element.

Hence, if we were to **consider just** the **second** element, an accused in a bigamy case, after the prosecution has proved the **negative**, i.e., that the prior marriage **had not been legally dissolved**, the burden of evidence shifts to the accused to prove that such **legal dissolution had in truth taken place**, the only evidence being the **judicial declaration** of a **legal dissolution**. Anything less **will not prove** a "**legally dissolved**" marriage.

To repeat, a marriage is **not legally dissolved** through a **collateral declaration** in a separate action that the marriage is void. This declaration may help in determining the **principal issue**, but this declaration will **not cause** the **legal dissolution** of the prior marriage.

Three. However, the second element is **not the only consideration** in deciding *whether a judicial declaration is the only evidence* an accused in a bigamy case can offer **to disprove** the prosecution's cause and obtain an acquittal.

Notably, there is also the **first element** – the offender has been **legally** married.

The **first element** means that the **prior** marriage is a **valid** marriage. As held in ***Lasanas v. People***,[16] citing ***Tenebro v. Court of Appeals***,[17] "[a] plain reading of [Article 349 of the Revised Penal Code], therefore, would indicate that the provision penalizes the mere act of contracting a second or subsequent marriage ***during the subsistence of a valid marriage***."

Proof by the prosecution of the **first element** comes from the offer of the **marriage certificate** of the prior marriage. This is the prima facie evidence of the **validity** of this marriage. The **burden of evidence shifts** to the accused to disprove the validity of the marriage. The accused disproves the validity of the prior marriage by **casting mere reasonable doubt** thereon.

In **practical** terms, this means raising **reasonable** doubt on the **absence** of the formal or essential requisites or the **presence** of the other causes of a **null marriage**. Obviously, the reference must be to **null marriages** because annullable or voidable marriages or the fact of divorce for that matter **presupposes** the **validity** of the marriages **until legally dissolved** – absent a

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[16] 736 Phil. 734 (2014).
[17] 467 Phil. 723 (2004).

legal dissolution, the marriage remains valid and binding. On the other hand, a **null marriage** is **void from the beginning of time**.

The **best evidence** to prove the invalidity of the prior marriage is a **judicial declaration of this marriage's nullity**. But **short of this best evidence**, an accused in a bigamy case has the constitutional **right to cast reasonable doubt** on the prosecution evidence on the **first element** in the **same criminal case** the accused is being tried.

In criminal cases, the burden is upon the prosecution to prove **every element** of the crime charged beyond a reasonable doubt. The failure to do so **even on a single element** entitles the accused to an acquittal.

It is **contrary to the *Constitution*** to require an accused **to disprove the first element** of bigamy **only by presenting a judicial declaration** of the prior marriage's nullity. This is because the **burden of an accused** to achieve such result is just **to cast reasonable doubt** on the **first element** of this crime.

What is meant by **proof beyond a reasonable doubt**? Rule 133 of the *Rules of Court* defines this **standard of proof**:

> SECTION 2. Proof Beyond Reasonable Doubt. — In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof **beyond a reasonable doubt** does **not mean** such a **degree of proof as, excluding possibility of error**, produces **absolute certainty. Moral certainty only is required**, or that degree of proof which **produces conviction in an unprejudiced mind**.

In practice, there is *proof beyond a reasonable doubt* where the judge can conclude: "All the above, as **established during trial, lead to no other conclusion than the commission of the crime** as prescribed in the law."[18] It involves asking these questions and getting answers to these questions:

- From the prosecution evidence that the judge accepts, must the presence of each of the elements of the crime charged and therefore the conviction of the accused inevitably and logically follow as a matter of course?

- Or, is there any other rational or reasonable explanation for the evidence that I accept than the presence of each of the elements of the crime charged or the accused's conviction for such crime?

- Or, is there a doubt as to the existence of any of the elements of the crime charged that can be reasonably explained on account or on the basis of the evidence or lack of evidence of the Prosecution?

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[18] 761 Phil. 356 (2015).

A **judicial declaration** is **not** the only means to disprove the first element. Admittedly though, it is the **best evidence** of the fact contrary to the first element. **But** a **doubt** provided it is **reasonable** is enough. In the words of a foreign case law:

> I am in full agreement with the following conclusion of Wood J.A. (at p. 525):
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> > With respect to those of a contrary view, it is difficult to think of a more accurate statement than that which defines reasonable doubt as a **doubt for which one can give a reason, so long as the reason given is logically connected to the evidence**. An **inability to give such a reason for the doubt one entertains is the first and most obvious indication that the doubt held may not be reasonable**. In this respect, I agree with the United States Court of Appeals, District of Columbia Circuit, in *U.S. v. Dale,* 991 F.2d 819 *(1993)* at p.853: "The instruction ... fairly convey[s] that the requisite doubt must be `based on reason' as distinguished from fancy, whim or conjecture."
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> In the end, while recognizing that the perfect charge was unattainable, Wood J.A. none the less approved as a "constitution-ally sufficient definition of reasonable doubt" ordinarily sufficient to explain the standard of proof to juries, British Columbia Supreme Court Justice Murray's standard form of jury instructions (at pp. 541-2):
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> > You will note that the Crown must establish the accused's guilt beyond a "reasonable doubt", not beyond "any doubt". A **reasonable doubt** is exactly what it says -a **doubt based on reason-** on the **logical processes of the mind**. It is **not a fanciful** or **speculative doubt, nor** is it a **doubt based upon sympathy or prejudice.** It is **the sort of doubt which, if you ask yourself "why do I doubt?"-you can assign a logical reason by way of an answer**.
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> > A **logical reason** in this context means **a reason connected either to the evidence itself**, including **any conflict you may find exists** after considering the evidence as a whole, or to **an absence of evidence** which in the circumstances of this case **you believe is essential to a conviction.**
> >
> > .....
> >
> > You must **not base your doubt** on the **proposition that nothing is certain or impossible or that anything is possible**. You are not entitled to set up a **standard of absolute certainty** and to say that the evidence does not measure up to that standard. In many things it is impossible to prove absolute certainty.[19]

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[19] *R. v. Lifchus*, 1996 CanLII 6631 (MB CA), <http://canlii.ca/t/1npkc>, last accessed on July 2, 2021.

Four. Applying these principles here, petitioner **should be acquitted** because the **prior marriage** has been shown to be a **nullity, contrary** to the **first element** of bigamy. The evidence on this is a judgment declaring the nullity of the prior marriage. This is the **best evidence** to prove the **failure** of the prosecution to prove the **first element** beyond a reasonable doubt. **Any other relevant** and **admissible evidence** offered in the same criminal proceeding for bigamy would have **also disestablished** the prosecution's claim of the validity of the prior marriage.

It also does **not** matter that the **judgment came only after** the celebration of the subsequent bigamous marriage and during the pendency of the present criminal case. For the **cause** of the invalidity of the prior marriage is one that makes it **void from the beginning of time**. Its nullity **retroacts** to that point in time and thus establishes the **absence of a subsisting valid marriage**.

E. Conclusion

It appears surreal to me that the **discussion on bigamy** has taken a life of its own **quite unlike** the **standard analysis** in criminal cases. Instead of **examining each of the elements** of this crime, as defined in Article 349, the discourse from the past till today has focused on the impact of Article 40 of the *Family Code*.

To be sure, **Article 40**, as ably argued by Justice Caguioa, **is not and has never been dispositive** of this issue in the prosecution of bigamy cases. The history, original intent, text and related provision of **Article 40** point to its relevance only for the purpose of **remarriage**.

However, the **second element** of bigamy, as supported by the clear wording of Article 349, requires a **negative averment** and **proof** of the legal **dissolution of the prior marriage** or the **judgment of presumptive death** or **absence** in the case of absentees. Thus, to disprove the second element, an accused would be hard-pressed to produce that legal dissolution which **would only mean the court judgment or decree of dissolution**. This is because legal dissolution **cannot take place** by means of a mere **collateral** declaration.

Nonetheless, the **first element** of bigamy requires the **validity of the prior marriage**. In disestablishing this first element, an accused may adduce in the same criminal case for bigamy evidence that would **cast reasonable doubt** on its existence. The evidence **need not** be a **judicial declaration** though this is indeed the **best evidence**. It could be **any relevant** and **admissible evidence** proving **any of the causes** of a **null marriage**. This is a **constitutional right** of an accused owing to the standard of proof in criminal cases, the burden of the prosecution to discharge this standard of proof, and the corollary presumption of innocence in favor of the accused. This right

cannot be taken away from an accused such as when this Court has interpreted Article 40 the way it has.

A last point. Much has been said about the difference between the Article 349 and Article 350 of *The Revised Penal Code*. These penal provisions each state:

Article 349	Article 350
ARTICLE 349. Bigamy. — The penalty of *prisión 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.	ARTICLE 350. Marriage Contracted Against Provisions of Laws. — The penalty of *prisión correccional* in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment. If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud, he shall be punished by the maximum period of the penalty provided in the next preceding paragraph.

I respectfully submit that the glaring difference between them is the presence of at least two successive marriages in Article 349, which would not be the situation in Article 350.

While both would involve at least one defective marriage, Article 349 entails more than one marriage.

Thus, a person who marries another without first obtaining a judicial declaration of nullity of that person's prior marriage would **potentially** be captured by both Articles 349 and 350.

However, it is the **prosecution's lookout** if the person could prove the **invalidity** of the prior marriage on causes attributable to **null marriages**, contrary to the **first element** of bigamy.

On the other hand, a prosecution under Article 350 will **not** have to deal with such complications because the **knowing** non-compliance with the legal requirements when the person contracts the subsequent marriage would be enough to find *them*[20] guilty.

Respectfully submitted.

AMY C. LAZARO-JAVIER
Associate Justice

[20] I purposely used "them" to reflect gender neutrality and be inclusive of all forms of gender association or non-association or different associations, i.e., male, female, undetermined, unaffiliated, ungendered.