

CRIMINAL LAW**LUISITO G. PULIDO v. PEOPLE OF THE PHILIPPINES****G.R. No. 220149, 27 JULY 2021, *EN BANC*, (HERNANDO, J.)****DOCTRINE OF THE CASE**

The prevailing rule under Art. 40 of the Family Code is that even if the marriage is void, a final judgment declaring it void for purposes of remarriage is required. However, in a criminal prosecution for Bigamy, the parties may still raise the defense of a void ab initio marriage even without obtaining a judicial declaration of absolute nullity if the first marriage was celebrated before the effectivity of the Family Code in line with the principle that procedural rules are only given retroactive effect insofar as they do not prejudice or impair vested or acquired rights. Consequently, a judicial declaration of absolute nullity of the first and/or subsequent marriages obtained by the accused in a separate proceeding, irrespective of the time within which they are secured, is a valid defense in the criminal prosecution for bigamy.

Here, Pulido's marriage with Arcon was celebrated when the Civil Code was in effect while his subsequent marriage with Baleda was contracted during the effectivity of the Family Code. Insofar as the bigamy case is concerned, Pulido may raise the defense of a void ab initio marriage even without obtaining a judicial declaration of absolute nullity.

FACTS

In 1983, Luisito Pulido (Pulido) married his then teacher Nora Arcon (Arcon) in a civil ceremony and the following year, their marriage was blessed with a child born in 1984. In 2007, Pulido stopped going home to their conjugal dwelling and when confronted by Arcon, Pulido admitted to his affair with Rowena Baleda (Baleda). Moreover, Arcon learned that Pulido and Baleda entered marriage in 1995 through a Marriage Certificate indicating Pulido's civil status as single.

Subsequently, Arcon charged Pulido and Baleda with Bigamy. In his defense, Pulido argued that he cannot be held criminally liable for bigamy because both his marriages were null and void in that his 1983 marriage with Arcon was null and void for lack of valid marriage license while his 1995 marriage with Baleda was null and void for lack of a marriage ceremony. For her part, Baleda claimed

that she only knew of Pulido's prior marriage with Arcon sometime in April 2007 and that she already filed a Petition to Annul her marriage with Pulido before the Regional Trial Court (RTC) of Imus, Cavite.

The RTC convicted Pulido of Bigamy and acquitted Baleda. The RTC dismissed Pulido's claim that both of his marriages were void. As to his first marriage, the marriage certificate reflecting on its face the marriage license number of Pulido and Arcon's marriage has a higher probative value than those issued by the Civil Registrar. Insofar as the second marriage is concerned, Pulido's witness showed only irregularities in the formal requisites of Pulido's second marriage, which did not affect its validity.

On appeal, the Court of Appeals (CA) sustained Pulido's conviction on the ground that all the elements of bigamy were present since Pulido entered into a second marriage with Baleda while his prior marriage with Arcon was subsisting.

ISSUES

(1) Can Pulido validly interpose the defense of a void *ab initio* marriage even without obtaining a judicial declaration of absolute nullity in a criminal prosecution for bigamy?

(2) Is Pulido's conviction of bigamy warranted?

RULING

(1) **YES.** The prevailing rule under Art. 40 of the Family Code is that even if the marriage is void, a final judgment declaring it void for purposes of remarriage is required. Without a judicial declaration of absolute nullity of the first marriage having been obtained, the second marriage is rendered void *ab initio* even if the first marriage was also considered void *ab initio*.

However, in a criminal prosecution for bigamy, the parties may still raise the defense of a void *ab initio* marriage even without obtaining a judicial declaration of absolute nullity if the first marriage was celebrated before the effectivity of the Family Code. Such is still governed by the rulings in *People v. Mendoza* and *People v. Aragon* as it is more in line with the rule that procedural rules are only given retroactive effect insofar as they do not prejudice or impair vested or acquired rights.

The Court emphasized as well that the judicial declaration of absolute nullity of the first and/or subsequent marriages obtained by the accused in a separate proceeding, irrespective of the time within which they are secured, is considered a valid defense in the criminal prosecution for bigamy.

Here, Pulido's marriage with Arcon was celebrated when the Civil Code was in effect while his subsequent marriage with Baleda was contracted during the effectivity of the Family Code. Insofar as the bigamy case is concerned, Pulido may raise the defense of a void *ab initio* marriage even without obtaining a judicial declaration of absolute nullity.

(2) **NO.** A void marriage is *ipso facto* void without need of any judicial declaration of nullity except in cases of remarriage because the same is deemed inexistent, *i.e.*, no marriage existed from the beginning. When the first marriage is void *ab initio*, one of the essential elements of bigamy which is a valid prior marriage is absent. Hence, there can be no crime when the very act which was penalized by law, the contracting of another marriage during the subsistence of a prior legal or valid marriage, is not present.

Here, Pulido and Arcon's marriage lacks a valid marriage license. As provided by Pulido, the Municipal Registrar issued the Certification dated December 8, 2008, stating that there was no record of entry of bot the date of issuance of the marriage license and the marriage license number in the record book for marriage application in relation to Pulido's first marriage.

The Court stressed that the fact the Registrar found no entry of the date of issuance and license number in its record book likely explains why the original document of the marriage license could not be found in its custody. With the absence of a valid marriage license, a reasonable doubt arises as to the existence of a prior valid marriage which is one of the elements of bigamy. More importantly, during the pendency of this case, a judicial declaration of absolute nullity of Pulido's marriage with Arcon due to the absence of a valid marriage license was issued and attained finality in 2016.

Lacking an essential element of the crime of bigamy *i.e.*, a prior valid marriage as per Certification dated December 8, 2008 and the subsequent judicial of nullity of Pulido and Arcon's marriage, the prosecution failed to prove that the crime of bigamy is committed. Thus, the Court acquitted Pulido of bigamy charge.

DANTE LOPEZ Y ATANACIO v. PEOPLE OF THE PHILIPPINES**G.R. No. 249196, 28 APRIL 2021, *FIRST DIVISION*, (ZALAMEDA, J.)****DOCTRINE OF THE CASE**

Without proper factual foundation, the presumption of fencing must be upended in favor of the presumption of innocence enjoyed by the accused. No prima facie evidence or case shall arise in the absence of the required facts on which the same must operate. The prosecution cannot, and should not, merely depend on the operation of the presumption of fencing to establish moral certainty for convicting the accused. More importantly, the courts should be mindful in applying such presumption, subject to a careful scrutiny of the facts of each case. This, considering that unjust convictions result to forfeiture of life, liberty, and property.

The presumption under Section 5 of PD 1612 which states that mere possession of any object which has been the subject of robbery or thievery shall be prima facie evidence of fencing was overcome by Atanacio upon presentation of the notarized affidavits of the President and Chief Mechanic of Bicycle Works that indeed, Atanacio bought the bicycle subject of the case from their store.

FACTS

Dante Lopez y Atanacio (Atanacio) was charged with the crime of fencing for allegedly stealing the mountain bike of complainant Rafael Mendoza y Dela Paz (Dela Paz).

Dela Paz alleged that he is the owner of the bike, it having been bought from abroad. However, it was stolen on January 15, 2011. He further alleged that on February 23, 2014, he saw his bicycle being ridden by Magno Lopez (Lopez), Atanacio's brother. Subsequently, when asked by Dela Paz on where Lopez got the bicycle, the latter answered that it was given by Atanacio. A blotter of the incident was made in the barangay.

Lopez testified that he got the bicycle from Atanacio in 2002. He further described the bike as, among others, a blue Araya-made model.

Atanacio insisted that he is the owner of the bicycle. He alleged that he bought it from Bicycle Works and presented evidence of the existence of said

bicycle shop including its SEC Registration, Articles of Incorporation, and ByLaws. While he was not able to present a receipt for the purchase of the bicycle, it being bought 20 years ago, he was able to present two (2) notarized affidavits from Bicycle Works as proof of his purchase.

The Regional Trial Court (RTC) found Atanacio guilty. It gave credence to the police blotter stating that on January 15, 2011, two (2) unidentified persons unlawfully and feloniously entered Dela Paz's garage and took his Mountain Bike colored blue with frame name "ARAYA" made in Japan and worth Php100,000.00. It further ruled that since the ownership of Dela Paz was established, Atanacio now had the burden of overcoming the presumption of fencing. Moreover, it ruled that the affidavit did not specify that the bicycle subject of the case was the same item that Atanacio brought from Bicycle Works.

The Court of Appeals (CA) affirmed the RTC.

ISSUE

Was the Atanacio's guilt proven beyond reasonable doubt?

RULING

NO. Without proper factual foundation, the presumption of fencing must be upended in favor of the presumption of innocence enjoyed by the accused. No prima facie evidence or case shall arise in the absence of the required facts on which the same must operate. The prosecution cannot, and should not, merely depend on the operation of the presumption of fencing to establish moral certainty for convicting the accused. More importantly, the courts should be mindful in applying such presumption, subject to careful scrutiny of the facts of each case. This, considering that unjust convictions result to forfeiture of life, liberty, and property.

Fencing is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft. The essential elements of the crime of fencing are:

- (a) A crime of robbery or theft has been committed;

- (b) The accused, who is not a principal or an accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime;
- (c) The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and
- (d) There is on the part of the accused, intent to gain for himself or for another.

Apart from the police blotter of the alleged robbery, no evidence was presented to prove Dela Paz's ownership of the bicycle in issue. The photos presented did not show any distinctive features to identify the bike. Worse, the evidence at hand did not establish that the bicycle given by Atanacio to Lopez is the same bicycle stolen from Dela Paz.

The features of the bicycle allegedly stolen from Dela Paz and the one owned by Atanacio are principally different from each other. The color of the fork of the bike owned by Dela Paz is aluminum or silver, while that of Atanacio is blue. The composition or the material used for the frame is also different. Dela Paz's is magnesium while Atanacio's is aluminum.

The presumption under Section 5 of PD 1612 which states that mere possession of any object which has been the subject of robbery or thievery shall be prima facie evidence of fencing was overcome by Atanacio upon presentation of the notarized affidavits of the President and Chief Mechanic of Bicycle Works that indeed, Atanacio bought the bicycle subject of the case from their store.

In law, a presumption is an inference of the existence or non-existence of a fact which courts are permitted to draw from proof of other facts, and is mandatory unless rebutted. The application of disputable presumptions on a given circumstance must be based on the existence of certain facts on which they are meant to operate. Since "presumptions are not allegations, nor do they supply their absence," disputable presumptions apply only in the absence of contrary evidence or explanations. They do not apply when there are no facts or allegations to support them, as in this case.

Without establishing beyond reasonable doubt that the item which has been the subject of theft is the same object in the possession of petitioner, the presumption under Section 5 of PD 1612 would not operate.

Further, the prosecution failed to prove the remaining elements of fencing. There is no evidence shown that Atanacio is neither the principal nor an accomplice of the alleged thievery reported by Dela Paz, and that he possessed or disposed of the latter's alleged bicycle. No proof was offered to show that Atanacio had knowledge that the bicycle he gave to Lopez was stolen, or that he had intent to gain therefrom. It is necessary to remember that in all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for the said crime.

To be sure, the prosecution has failed to discharge its onus of proving, beyond reasonable doubt, the guilt of petitioner for violation of PD 1612. For settled is the rule that in every criminal prosecution, the accused is presumed innocent until the contrary is established by the prosecution.

The prosecution, at all times, bears the burden of establishing an accused's guilt beyond reasonable doubt. No matter how weak the defense may be, it is not and cannot be the sole basis of conviction if, on the other hand, the evidence for the prosecution is even weaker.

Further, it is well-settled, to the point of being elementary, that when inculpatory facts are susceptible to two or more interpretations, one of which is consistent with the innocence of the accused, the evidence does not fulfill or hurdle the test of moral certainty required for conviction.