EN BANC

G.R. No. 220149 – LUISITO G. PULIDO, *petitioner,* ***versus,*** **PEOPLE OF THE PHILIPPINES,** *respondent.*

Promulgated:

July 27, 2021

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CONCURRING OPINION

CAGUIOA, *J.*:

I agree with the acquittal of petitioner and the *ponencia*'s ruling that, in criminal prosecutions for Bigamy, an accused can validly interpose the defense of a void marriage, even in the absence of a judicial declaration of absolute nullity.[1]

I write this opinion to highlight the need for the Court to abandon previous cases which ruled otherwise. A plain reading of Article 349 of the Revised Penal Code (RPC), which to date has not been amended or repealed by any law, supports the conclusion that the absolute nullity of a void *ab initio* marriage is a valid defense in an indictment for Bigamy, regardlesss of the existence of a separate judicial declaration nullifying said marriage. The absolute nullity of a *void* marriage may also be established and proven by the accused in the very criminal proceeding filed against him, through other evidence aside from a judicial decree declaring the marriage *void ab initio*.

As elaborated in the *ponencia*, the Court has taken differing positions with respect to the issue of whether the nullity of a marriage void *ab initio* is a valid defense in a prosecution for Bigamy.[2]

In the earlier cases of *People v. Mendoza*,[3] *People v. Aragon*,[4] *People v. Mora Dumpo*[5] and *People v. De Lara*,[6] the Court recognized that nullity of a void marriage is a valid defense and if proven during trial will exonerate an accused of the crime of Bigamy.

Mendoza and *Aragon* involved the nullity of the first marriage, whereas in *Mora Dumpo* and *De Lara* it was the nullity of the subsequent marriage that was raised. In all these cases, the Court acquitted the accused ruling that the crime of Bigamy was not and could not have been committed because the respective prior or subsequent marriages were considered by law void *ab initio*.

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1 *Ponencia*, p. 21.
2 Id. at 15-21.
3 95 Phil. 845 (1954).
4 100 Phil. 1033 (1957).
5 62 Phil. 246 (1935).
6 No. 12583-R, February 14, 1955, 51 O.G. 4079.

In *Mendoza*, the Court explained that "[a] prosecution for bigamy based on said void marriage will not lie."[7] In *Aragon*, the Court, reiterating *Mendoza*, ruled that the absolute nullity of a previous marriage exonerates an accused of Bigamy and "no judicial decree is necessary to establish its invalidity, as distinguished from mere annullable marriages."[8]

In *Mora Dumpo* the Court held that, for Bigamy to arise, the alleged second or subsequent marriage must also be valid. It must have all the essential requisites of a valid marriage except for the existence of the first marriage. Otherwise, "there is no justification to hold [an accused] guilty of the crime [of Bigamy as] charged in the information."[9]

In *De Lara*, the Court acquitted the accused because it was established that the subsequent marriage was contracted without a marriage license. The Court explained that the second marriage could not even be considered a bigamous marriage as it was void *ab initio* on grounds other than the existence of the first marriage.[10]

In succeeding cases, however, the Court has taken a 180-degree turn.[11] The change in jurisprudence was impelled by the subsequent enactment of Article 40 of the Family Code.

Foremost is the case of *Mercado v. Tan.*[12] In *Mercado*, the Court did not give credence to the judicial declaration of nullity of the first marriage subsequently obtained by the accused during the pendency of the criminal case for Bigamy. According to the Court, by contracting a second marriage while the first marriage was subsisting, the accused committed the acts punishable under Article 349 of the RPC. That the accused subsequently obtained a judicial declaration of nullity of his first marriage was immaterial. The Court emphasized that Article 40 of the Family Code has effectively overturned the Court's ruling in *Mendoza* and *Aragon.*[13] Thus, "[a] judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies even if the earlier union is characterized by statutes as 'void.'"[14]

Similar to *Mercado*, the Court in *Marbella-Bobis v. Bobis*[15] found that the issue on the absolute nullity of the first marriage, pending in a civil case, is

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7 See Syllabus, supra note 3.

8 *People v. Aragon*, supra note 4, at 1035.

9 Supra note 5, at 248.

10 Supra note 6.

11 See *Mercado v. Tan*, G.R. No. 137110, August 1, 2000, 337 SCRA 122; *Marbella-Bobis v. Bobis*, G.R. No. 138509, July 31, 2000, 336 SCRA 747; *Tenebro v. Court of Appeals*, G.R. No. 150758, February 18, 2004, 423 SCRA 272; *Santiago v. People*, G.R. No. 200233, July 15, 2015, 763 SCRA 54; *Antone v. Beronilla*, G.R. No. 183824, December 8, 2010, 637 SCRA 615; *Abunado v. People*, G.R. No. 159218, March 30, 2004, 426 SCRA 562; *Jarillo v. People*, G.R. No. 164435, September 29, 2009, 601 SCRA 236.

12 Id.

13 See also *Te v. Court of Appeals*, G.R. No. 126746, November 29, 2000, 346 SCRA 327, 336.

14 *Mercado v. Tan*, supra note 11, at 124.

15 Supra note 11.

immaterial in the prosecution for Bigamy. The Court explained that in light of Article 40 of the Family Code, he who contracts a subsequent marriage before the judicial declaration of nullity of his first marriage assumes the risk of being prosecuted for bigamy and in such a case, the criminal case may not be suspended on the ground of the pendency of a civil case for declaration of nullity.[16] The Court further noted that to allow an accused to simply invoke the nullity of his first marriage is to render the provisions on bigamy nugatory, *viz.*:

> 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. x x x[17]

In another case, *Tenebro v. Court of Appeals*,[18] where the accused raised the nullity of his second marriage based on a final and executory judgment, the Court still found the accused guilty of Bigamy. According to the Court, "the nullity of the second marriage is not *per se* an argument for the avoidance of criminal liability for bigamy. x x x Article 349 of the Revised Penal Code criminalizes x x x *the mere act of contracting a second or a subsequent marriage during the subsistence of a valid marriage*," regardless of whether the second or subsequent marriage is void *ab initio*.[19] Further, similar to *Marbella-Bobis*, the Court held in *Tenebro* that acquitting the accused "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."[20]

Applying the principle enunciated in *Mercado*, *Marbella-Bobis* and *Tenebro*, the Court consistently ruled in a catena of cases, which includes, among others, *Jarillo v. People*,[21] *Antone v. Beronilla*,[22] *Teves v. People*,[23] *Montañez v. Cipriano*,[24] and *People v. Odtuhan*,[25] that the subsequent declaration of nullity of the first marriage or second marriage is immaterial in

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16 Id. at 753-754.
17 Id. at 753.
18 Supra note 11.
19 Id. at 282; italics in the original.
20 Id. at 284.
21 Supra note 11.
22 Id.
23 G.R. No. 188775, August 24, 2011, 656 SCRA 307.
24 G.R. No. 181089, October 22, 2012, 684 SCRA 315.
25 G.R. No. 191566, July 17, 2013, 701 SCRA 506.

the prosecution for Bigamy. The crime of Bigamy is committed once a person contracts a second marriage without first securing a judicial decree of nullity of his first marriage, even if the latter is considered by law void *ab initio*.

These succeeding cases, which were diametrically opposed to the earlier jurisprudence in the cases of *Mendoza, et al.*, find no clear anchor on the plain language of Article 349 of the RPC and Article 40 of the Family Code. In fact, these cases unduly expanded the crime of Bigamy as defined and penalized by the RPC and the purpose for which Article 40 of the Family Code was enacted.

I expound.

The absolute nullity of a void marriage is a valid defense in Bigamy. Article 349 of the RPC applies only to valid or at least voidable and not void ab initio marriages. Other crimes not covered by Article 349 are punishable under Article 350 of the RPC.

When the statute speaks unequivocally, there is nothing for the courts to do but to apply it.[26] The plain, clear and unambiguous language of the law must be taken to mean exactly what it says and courts have no choice but to see to it that the mandate is obeyed.[27]

In this case, the Court is called upon to apply the clear and straightforward language of Article 349 of the RPC, which defines and penalizes the crime of Bigamy. Article 349 explicitly states that Bigamy is committed by "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."[28] Thus, to secure a conviction under Article 349, the following elements must all be established, beyond reasonable doubt:

1. the offender **has been legally married**;
2. the first marriage **has not been legally dissolved**, or in case his or her spouse is absent, the absent spouse has not been judicially declared presumptively dead;
3. he contracts a subsequent marriage; and
4. **the subsequent marriage would have been valid had it not been for the existence of the first**.[29]

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26 *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, March 22, 2011, 646 SCRA 21, 33.

27 *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, 168207, 168461, 168463 & 168730, September 1, 2005, 469 SCRA 14, 122.

28 Emphasis, italics and underscoring supplied.

29 *Morigo v. People*, G.R. No. 145226, February 6, 2004, 422 SCRA 376, 382; See Associate Justice Antonio T. Carpio's Dissenting Opinion in *Tenebro v. Court of Appeals*, supra note 11, at 298.

Based from the foregoing, Bigamy is committed not by simply contracting multiple marriages regardless of their inherent defects. The gravamen of the offense, based on the plain language of the law, is the act of contracting two valid marriages.[30] It is essential therefore that the validity of the first and second marriages be sufficiently established before an accused may be convicted for Bigamy. Hence, the first element requires that the offender must be **legally married** and that such marriage was not legally dissolved when the offender contracted a second or subsequent marriage. That Article 349 intentionally used the term "**legally dissolved**"[31] presupposes that the first or former marriage must be valid or at least voidable and not void *ab initio*; because unlike a voidable marriage, which is considered by law valid from the beginning unless annulled or dissolved by the court, a marriage void *ab initio* does not need to be "*legally dissolved*"[32] as it is deemed to have not taken place at all.[33] The Court's ruling in *Suntay v. Cojuangco-Suntay*[34] lends credence:

> The fundamental distinction between void and voidable marriages is that a **void marriage is deemed never to have taken place at all**. x x x.
>
> On the other hand, **a voidable marriage, is considered valid and produces all its civil effects, until it is set aside by final judgment of a competent court in an action for annulment**. Juridically, the annulment of a marriage dissolves the special contract as if it had never been entered into but the law makes express provisions to prevent the effects of the marriage from being totally wiped out. x x x
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> x x x x
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> Indeed, the terms *"annul"* and *"null and void"* have different legal connotations and implications. Annul means to reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with whereas null and void is something that does not exist from the beginning. **A marriage that is *annulled* presupposes that it subsists but later ceases to have legal effect when it is terminated through a court action. But in nullifying a marriage, the court simply declares a status or condition which already exists from the very beginning.**[35]
> (Emphasis supplied; italics in the original)

The fourth element of Bigamy also requires that the second or subsequent marriage must be likewise valid and not void *ab initio*. It must have all the essential requisites of a valid marriage were it not only for the existence of the first or prior marriage.[36] To reiterate, under Article 349 of the RPC, Bigamy is committed by contracting two valid marriages. Hence, if the second marriage is void *ab initio* for grounds other than the subsistence of the first marriage (*e.g.*, lack of a marriage license), then the crime of Bigamy also does not arise.

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30 The second or subsequent marriage must have all the requisites of a valid marriage other than existence of the first marriage.

31 Emphasis supplied.

32 Italics supplied.

33 *Niñal v. Bayadog*, G.R. No. 133778, March 14, 2000, 328 SCRA 122.

34 G.R. No. 132524, December 29, 1998, 300 SCRA 760.

35 Id. at 770-771.

36 See *People v. Mora Dumpo*, supra note 5, at 248; *Manuel v. People*, G.R. No. 165842, November 29, 2005, 476 SCRA 461, 477.

The nullity of a void *ab initio* marriage, whether pertaining to the first or subsequent marriage, is undoubtedly a valid defense in a prosecution for Bigamy because void marriages are not covered or penalized under Article 349 of the RPC. What Article 349 contemplates is a situation where a person, whose marriage is valid or at least voidable, contracts a second or subsequent valid marriage without securing first a judicial decree of annulment of his or her former marriage.

Conversely, when the first or prior marriage was annulled by a competent court before the subsequent marriage was celebrated or when the former marriage is void *ab initio* or when the second or subsequent marriage is void on grounds other than the existence of the first marriage, the crime of Bigamy is not committed. As such, the accused must be acquitted of Bigamy because his acts are not punishable under Article 349 of the RPC. The acquittal of an accused in these cases does not render the law on bigamy nugatory. On the contrary, the court, in fact, gives life to the law by obeying its mandate and applying it only in cases clearly embraced by it. It must be remembered that no act can be pronounced criminal which is not clearly made so by statute; so, too, no person who is not clearly within the terms of a statute can be brought within them.[37]

In addition, the Court's quandary, in the previously discussed cases, of allowing individuals who make a mockery of the sanctity of marriage by deliberately contracting multiple void *ab initio* marriages to easily escape the consequences of their illegal acts is more apparent than real. The Court in these cases overlooked Article 350 of the RPC. As correctly pointed out in the *ponencia*, while these deliberate acts may not be covered under Article 349 of the RPC, they are nonetheless punishable under Article 350 of the RPC,[38] which provides:

> **ART. 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 proceeding 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. (Emphasis and italics supplied)

That Article 350 expressly penalizes the act of knowingly contracting marriage without the requirements of law or in disregard of a legal impediment – which essentially includes void *ab initio* marriages – reinforces the fact that Article 349 only applies to valid or at least voidable marriages. Stated differently, the act of knowingly contracting multiple void *ab initio* marriages

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37 *People v. Atop*, G.R. Nos. 124303-05, February 10, 1998, 286 SCRA 157, 170-171.

38 *Ponencia*, pp. 30-31.

is clearly a violation of Article 350, but not considered a crime of Bigamy under Article 349 of the RPC.

A separate judicial declaration is not indispensable in proving the defense of absolute nullity of a void marriage. The absolute nullity of a marriage may be determined by the court in the same criminal proceeding.

Having established that the nullity of a void *ab initio* marriage is a valid defense in Bigamy, the question now is this: Is a separate judicial decree of nullity necessary before an accused may raise such defense in a Bigamy case?

My answer is no. An accused may raise the nullity of his or her void marriage in the same criminal proceeding and the criminal court shall have jurisdiction to rule on the issue as it is determinative of the guilt or innocence of the accused.

As discussed, void and voidable marriages are not identical. Unlike valid or voidable marriage, a void *ab initio* marriage is inexistent and no judicial decree is necessary to establish its invalidity. The nullity of a void *ab initio* marriage may be attacked directly by filing an action attacking the validity thereof or collaterally in any proceeding where the issue of its validity is essential to the resolution of the case. The Court in a catena of cases has been very clear about this distinction.

In *Niñal v. Bayadog*,[39] the Court clarified that:

> x x x **Voidable and void marriages are not identical. A marriage that is annullable is valid until otherwise declared by the court; whereas a marriage that is void *ab initio* is considered as having never to have taken place and cannot be the source of rights.** The first can be generally ratified or confirmed by free cohabitation or prescription while the other can never be ratified. **A voidable marriage cannot be assailed collaterally except in a direct proceeding while a void marriage can be attacked collaterally.** x x x[40] (Emphasis supplied and italics in the original)

Similarly, in *De Castro v. Assidao-De Castro*,[41] the Court held that "[t]he validity of a void marriage may be collaterally attacked x x x in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. However, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a marriage an absolute nullity."[42] Again, in *Castillo v. De Leon-Castillo*,[43] the

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39 Supra note 33.
40 Id. at 134.
41 G.R. No. 160172, February 13, 2008, 545 SCRA 162.
42 Id. at 169-170.
43 G.R. No. 189607, April 18, 2016, 789 SCRA 503.

Court reiterated that "being nonexistent, a void marriage can be collaterally attacked, while a voidable marriage cannot be collaterally attacked[.]"[44]

Accordingly, a separate judicial decree of nullity is not necessary before an accused may raise the nullity of his marriage as a defense in a prosecution for Bigamy. An accused may raise the nullity of his void marriage in the same criminal proceeding by presenting testimonial and documentary evidence proving the nullity of his or her marriage, and the criminal court shall have jurisdiction to rule on the issue because its resolution will determine the guilt or innocence of the accused.

Moreover, to require a separate judicial declaration of nullity for void *ab initio* marriages would blur the distinction created by law between Article 349 and Article 350 of the RPC. To reiterate, Article 349 penalizes the act of contracting two valid marriages; while Article 350 covers acts of deliberately contracting void *ab initio* marriages. By requiring a separate judicial decree, instead of the same criminal court resolving the issue, the accused runs the risk of being found guilty of Article 349 on the basis solely of his failure to secure a separate judicial decree of nullity of his void marriage, when the acts he actually committed may have been punishable under Article 350.

In this regard, the Court in the earlier cases of *Mendoza* and *Aragon* rightly applied the plain language of Article 349 when it ruled that the absolute nullity of a prior marriage void *ab initio* is a valid defense in a criminal case for Bigamy and "no judicial decree is necessary to establish its invalidity, as distinguished from mere annullable marriages."[45] Similarly, in the cases of *Mora Dumpo* and *De Lara*, the Court was correct in acquitting the accused of Bigamy because it was proven during trial that the second marriage was void *ab initio* on grounds other than the existence of the first marriage. In these cases, the Court correctly recognized that a void *ab initio* marriage is not covered by Article 349 of the RPC and a separate judicial declaration is not indispensable to prove its nullity.

However, as earlier discussed, in succeeding cases, the Court took a 180-degree turn where the Court completely disregarded the plain and clear language of Article 349 of the RPC and ruled that a prior judicial decree of nullity of marriage void *ab initio* is necessary before a person may subsequently marry; otherwise, he runs the risk of being held liable for Bigamy under Article 349 of the RPC. This pronouncement of the Court was generally premised on the erroneous assumption that Article 40 of the Family Code had effectively abandoned the rulings in *Mendoza*, *Aragon*, *Mora Dumpo* and *De Lara*. However, Article 40 of the Family Code did not in any way amend or repeal the elements of Bigamy, as defined and penalized under Article 349 of the RPC. Consequently, its enactment could not have overturned *Mendoza*, *Aragon*,

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44 Id. at 512, citing EDUARDO P. CAGUIOA, COMMENTS AND CASES ON CIVIL LAW (CIVIL CODE OF THE PHILIPPINES), Vol. I, p. 154 (Third Edition, 1967).

45 *People v. Aragon*, supra note 4, at 1035, citing *People v. Mendoza*, supra note 3, at 847.

Mora Dumpo and *De Lara*, where the Court simply applied the plain language of the penal code.

Article 40 of the Family Code applies only for purposes of remarriage.

First, there is no indication at all from the plain language of Article 40 that the elements of Bigamy were repealed or amended so as to include void *ab initio* marriages as among those penalized by Article 349 and no longer covered under Article 350 of the RPC. On the contrary, what is apparent is that the judicial declaration of nullity of a previous void marriage, as required under Article 40 of the Family Code, is of limited application – *i.e.*, it is only necessary for purposes of remarriage, *viz.*:

> 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. (Emphasis, italics and underscoring supplied)

Thus, as I see it, what Article 40 simply means is that if a person wants to contract a subsequent marriage and for that marriage to be recognized under the law as valid, he must first secure a judicial decree declaring the previous marriage void *ab initio*. Otherwise, the subsequent marriage is null and void.[46] The purpose therefore of a prior judicial decree of nullity, under Article 40, was only to establish the validity of the subsequent marriage, and not to hold one criminally liable for Bigamy for failure to secure the same.

Second, Article 40 of the Family Code does not totally prohibit a collateral attack against a void *ab initio* marriage.

In *Domingo v. Court of Appeals*,[47] the Court had the opportunity to interpret Article 40 of the Family Code. Parsed from the committee deliberations, the Court in *Domingo* clarified that a collateral attack against a void marriage may be permitted for purposes other than remarriage.

> The Family Law Revision Committee and the Civil Code Revision Committee which drafted what is now the Family Code of the Philippines took the position that parties to a marriage should not be allowed to assume that their marriage is void even if such be the fact but must first secure a judicial declaration of the nullity of their marriage before they can be allowed to marry again. This is borne out by the following minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees where the present Article 40, then Art. 39, was discussed.
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> "B. Article 39. —

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[46] See Article 53 of the Family Code.

> Article 53. Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.

[47] G.R. No. 104818, September 17, 1993, 226 SCRA 572.

> The absolute nullity of a marriage may be invoked only on the basis of a final judgment declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that the above provision should include not only void but also voidable marriages. He then suggested that the above provision be modified as follows:

> The validity of a marriage may be invoked only . . .

Justice Reyes (J.B.L. Reyes), however, proposed that they say:

> The validity or invalidity of a marriage may be invoked only . . .

On the other hand. Justice Puno suggested that they say:

> The invalidity of a marriage may be invoked only . . .

Justice Caguioa explained that his idea is that one cannot determine for himself whether or not his marriage is valid and that a court action is needed. Justice Puno accordingly proposed that the provision be modified to read:

> The invalidity of a marriage may be invoked only on the basis of a final judgment annulling the marriage or declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that in annulment, there is no question. Justice Puno, however, pointed out that, even if it is a judgment of annulment, they still have to produce the judgment.

Justice Caguioa suggested that they say:

> The invalidity of a marriage may be invoked only on the basis of a final judgment declaring the marriage invalid, except as provided in Article 41.

Justice Puno raised the question: When a marriage is declared invalid, does it include the annulment of a marriage and the declaration that the marriage is void? Justice Caguioa replied in the affirmative. Dean Gupit added that in some judgments, even if the marriage is annulled, it is declared void. Justice Puno suggested that this matter be made clear in the provision.

Prof. Baviera remarked that the original idea in the provision is to require first a judicial declaration of a void marriage and not annullable marriages, with which the other members concurred. Judge Diy added that annullable marriages are presumed valid until a direct action is filed to annul it, which the other members affirmed. Justice Puno remarked that if this is so, then the phrase 'absolute nullity' can stand since it might result in confusion if they change the phrase to 'invalidity' if what they are referring to in the provision is the declaration that the marriage is void.

Prof. Bautista commented that they will be doing away with collateral defense as well as collateral attack. Justice Caguioa explained that the idea in the provision is that there should be a final judgment declaring the marriage void and a party should not declare for himself whether or not the marriage is void, which the other members affirmed. **Justice Caguioa added that they are, therefore, trying to avoid a collateral attack on that point. Prof. Bautista stated that there are actions which are brought on the assumption that the marriage is valid. He then asked: Are they depriving one of the right to raise the defense that he has no liability because the basis of the liability is void? Prof. Bautista added that they cannot say that there will be no judgment on the validity or invalidity of the marriage because it will be taken up in the same proceeding. It will not be a unilateral declaration that it is a void marriage.** ***Justice Caguioa saw the point of Prof. Bautista and suggested that they limit the provision to remarriage.*** He then proposed that Article 39 be reworded as follows:

> The absolute nullity of a marriage for purposes of remarriage may be invoked only on the basis of final judgment . . .

Justice Puno suggested that the above be modified as follows:

> The absolute nullity of a previous marriage may be invoked for purposes of establishing the validity of a subsequent marriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41.

Justice Puno later modified the above as follows:

> For the purpose of establishing the validity of a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

> Justice Caguioa commented that the above provision is too broad and will not solve the objection of Prof. Bautista. He proposed that they say:
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> > For the purpose of entering into a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.
>
> **Justice Caguioa explained that the idea in the above provision is that if one enters into a subsequent marriage without obtaining a final judgment declaring the nullity of a previous marriage, said subsequent marriage is void *ab initio*.**
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> After further deliberation, Justice Puno suggested that they go back to the original wording of the provision as follows:
>
> > The absolute nullity of a previous marriage may be invoked for purposes of remarriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41."
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> x x x x
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> That Article 40 as finally formulated included the significant clause denotes that such final judgment declaring the previous marriage void need not be obtained only for purposes of remarriage. Undoubtedly, one can conceive of other instances where a party might well invoke the absolute nullity of a previous marriage for purposes other than remarriage, such as in case of an action for liquidation, partition, distribution and separation of property between the erstwhile spouses, as well as an action for the custody and support of their common children and the delivery of the latters' presumptive legitimes. In such cases, evidence needs [to] be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void. x x x[48] (Citations omitted; emphasis and underscoring supplied; italics in the original)

It is apparent from the foregoing disquisition among Justice Puno, Justice Caguioa, and Prof. Bautista that Article 40 was not intended to repeal the rule that a void *ab initio* marriage is subject to a collateral attack. In fact, the framers recognized that there are actions where the absolute nullity of marriage may be raised as a defense to avoid liability and they would not want to deprive a person of his right to raise such defense, or a court of its jurisdiction to rule on the issue. Thus, the framers opted to limit Article 40 to remarriage only. Consequently, for purposes other than remarriage, where the absolute nullity of a void *ab initio* marriage is raised, the court may rule on such issue and the

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[48] Id. at 579-584.

absolute nullity of a such void marriage may be proven by other evidence both testimonial and documentary.

In *Niñal v. Bayadog*,[49] the Court, reading together the provisions of the Civil Code and Article 40 of the Family Code, also recognized that a void *ab initio* marriage is subject to a collateral attack even in a criminal case, *viz.*:

> Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage. "A void marriage does not require a judicial decree to restore the parties to their original rights or to make the marriage void but though no sentence of avoidance be absolutely necessary, yet as well for the sake of good order of society as for the peace of mind of all concerned, it is expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction." "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*. But Article 40 of the Family Code expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage and such absolute nullity can be based only on a final judgment to that effect. For the same reason, the law makes either the action or defense for the declaration of absolute nullity of marriage imprescriptible. Corollarily, if the death of either party would extinguish the cause of action or the ground for defense, then the same cannot be considered imprescriptible.
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> **However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case.** This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the Family Code connotes that such final judgment need not be obtained only for purpose of remarriage.[50] (Citations omitted; emphasis and underscoring supplied)

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49 Supra note 33.

50 Id. at 135-136.

Again, in *Cariño v. Cariño*,[51] the Court, reiterating *Domingo* and *Niñal*, held:

> Under Article 40 of the Family Code, 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. Meaning, where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring the previous marriage void. However, for purposes other than remarriage, no judicial action is necessary to declare a marriage an absolute nullity. **For other purposes, such as but not limited to the determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even after the death of the parties thereto, and even in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. In such instances, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void.**
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> **In *Domingo v. Court of Appeals*, however, the Court, construing Article 40 of the Family Code, clarified that a prior and separate declaration of nullity of a marriage is an all important condition precedent only for purposes of remarriage.** That is, if a party who is previously married wishes to contract a second marriage, he or she has to obtain first a judicial decree declaring the first marriage void, before he or she could contract said second marriage, otherwise the second marriage would be void. The same rule applies even if the first marriage is patently void because the parties are not free to determine for themselves the validity or invalidity of their marriage. **However, for purposes other than to remarry, like for filing a case for collection of sum of money anchored on a marriage claimed to be valid, no prior and separate judicial declaration of nullity is necessary.** All that a party has to do is to present evidence, testimonial or documentary, that would prove that the marriage from which his or her rights flow is in fact valid. Thereupon, the court, if material to the determination of the issues before it, will rule on the status of the marriage involved and proceed to determine the rights of the parties in accordance with the applicable laws and jurisprudence. Thus, in *Niñal v. Bayadog*, the Court explained:
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> > [T]he court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the Family Code connoted that such final

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[51] G.R. No. 132529, February 2, 2001, 351 SCRA 127.

> judgment need not be obtained only for purpose of remarriage.[52]
> (Citations omitted; emphasis and underscoring supplied)

Based on the foregoing, Article 40 of the Family Code was clearly not intended to amend or repeal the crime of Bigamy as defined and penalized under Article 349 of the RPC. It was also not intended to totally prohibit a collateral attack against a void *ab initio* marriage. To reiterate, Article 40 applies only for purposes of remarriage, of establishing the validity of a subsequent marriage. Therefore, notwithstanding the enactment of Article 40, a void *ab initio* marriage remains to be a valid defense in a Bigamy case and a prior and separate judicial declaration of nullity is not indispensable to establish the same. An accused in the very same criminal proceeding may raise the nullity of his or her marriage as void *ab initio* and adduce testimonial and documentary evidence showing the existence of grounds proving said marriage to be a nullity.

In sum, I join the *ponencia* in abandoning previous jurisprudence where the Court completely disregarded the nullity of a marriage void *ab initio* as a valid defense in a prosecution for Bigamy. These rulings were based on an oversight that Article 40 of the Family Code had modified or repealed Article 349 of the RPC. The clear text of the law and the deliberations thereof, however, are clear that Article 40 of the Family Code was enacted only for purposes of remarriage. It does not have any effect on the elements of the crime of Bigamy, as defined and penalized under Article 349 of the RPC.

On the other hand, the Court's ruling in the earlier cases of *Mendoza, et al.* — where the absolute nullity of a void marriage was recognized a valid defense in Bigamy and that a prior or separate judicial decree is not indispensable to prove the same — is not only in accord with the letter and intent of the law, it is also consistent with the time-honored principle that all penal laws must be liberally construed in favor of the accused.

> For, it is a well-entrenched rule that penal laws are to be construed strictly against the State and liberally in favor of the accused. **They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused.** If the statute is ambiguous and admits of two reasonable but contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred. **The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.**

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[52] Id. at 131-139.

> The purpose of strict construction is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition of forbidden acts.[53] (Emphasis and underscoring supplied)

In fine, I vote to grant the petition. Considering that petitioner's first marriage was proven as void *ab initio*, the crime of Bigamy was not committed because the first element of the offense is missing. Petitioner's acquittal is therefore in order.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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53 *People v. Sullano*, G.R. No. 228373, March 12, 2018, 858 SCRA 274, 289.