Republic of the Philippines
Supreme Court
Manila

EN BANC

LUISITO G. PULIDO,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 220149

Present:

GESMUNDO *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M. V.,
GAERLAN,
ROSARIO, and
LOPEZ, J. Y., *JJ.*

Promulgated:

July 27, 2021

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DECISION

HERNANDO, *J.*:

May an accused indicted for Bigamy be exculpated on the basis of the judicial declaration of nullity of his first or second marriage?

Challenged in this Petition for Review on *Certiorari*[1] are the March 17, 2015 Decision[2] and the August 18, 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 33008 which affirmed with modification the June 22, 2009 Decision[4] of the Regional Trial Court (RTC), Branch 275 of Las

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[1] *Rollo*, pp. 9-20.

[2] CA *rollo*, pp. 99-113; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. (now a retired Member of this Court) and Francisco P. Acosta.

[3] Id. at 139-140.

[4] Records, pp. 183-187; penned by Judge Bonifacio Sanz Maceda.

Piñas City in Criminal Case No. 08-0166 which found petitioner Luisito G. Pulido (Pulido) guilty beyond reasonable doubt of Bigamy.

The Antecedents:

Pulido and Rowena U. Baleda (Baleda) were charged before the RTC with Bigamy in an Information[5] that reads:

> That on or about the 31st day of July 2005, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court the above-named accused, being then legally married to the complainant NORA A. PULIDO, which marriage is still existing and has not been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second marriage with one ROWENA U. BALEDA, who knowingly consented thereto, which second marriage has all the requisites for validity.
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> CONTRARY TO LAW.[6]

Petitioner pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

Records show that on September 5, 1983, then 16-year old petitioner married his teacher, then 22-year old private complainant Nora S. Arcon (Arcon) in a civil ceremony at the Municipal Hall of Rosario, Cavite solemnized by then Mayor Calixto D. Enriquez.[7] Their marriage was blessed with a child born in 1984.[8]

The couple lived together until 2007 when Pulido stopped going home to their conjugal dwelling. When confronted by Arcon, Pulido admitted to his affair with Baleda. Arcon likewise learned that Pulido and Baleda entered into marriage on July 31, 1995 which was solemnized by Reverend Conrado P. Ramos. Their Marriage Certificate indicated Pulido's civil status as single.[9]

Hurt by the betrayal, Arcon charged[10] Pulido and Baleda with Bigamy on December 4, 2007. In his defense, Pulido insisted that he could not be held criminally liable for bigamy because both his marriages were null and void. He claimed that his marriage with Arcon in 1983 is null and void for lack of a valid marriage license while his marriage with Baleda is null and void for lack of a marriage ceremony.

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5 Id. at 1.
6 Id.
7 Id. at 124.
8 Id. at 125.
9 Id. at 126.
10 Id. at 120-123.

Baleda, on the other hand, claimed that she only knew of Pulido's prior marriage with Arcon sometime in April 2007. She alleged that even prior to the filing of the bigamy case, she already filed a Petition to Annul her marriage with Pulido before the RTC of Imus, Cavite docketed as Civil Case No. 1586-07. In a Decision[11] dated October 25, 2007, the RTC declared her marriage with Pulido as null and void for being bigamous in nature. This ruling attained finality, there being no appeal filed thereto.[12]

Ruling of the Regional Trial Court:

In its June 22, 2009 Decision,[13] the trial court convicted petitioner of Bigamy and acquitted Baleda.

In so ruling, the RTC dismissed Pulido's claim that both his marriages are void. As to the first marriage, the trial court noted that the certifications issued by the Civil Registrar merely proved that the marriage license and marriage application could not be found, not that they never existed or were never issued. It held that the marriage certificate which reflected on its face the marriage license number of Pulido and Arcon's marriage has a higher probative value than the certifications issued by the Civil Registrar.

Moreover, the trial court noted that the testimony of Pulido's witness shows only irregularities in the formal requisites of Pulido's second marriage which did not affect its validity. Thus, the RTC upheld the validity of Pulido's marriage with Arcon.

The *fallo* of the RTC judgment reads:

> WHEREFORE, judgment is hereby rendered ACQUITTING accused Rowena M. Baleda. In turn, accused LUISITO G. PULIDO is found GUILTY beyond reasonable doubt of the crime of bigamy and he is hereby sentenced to suffer an indeterminate prison term of 2 years, 4 months and 1 day of *prision correccional* as minimum to 6 years and 1 day of *prision mayor* as maximum and to suffer the accessory penalty provided for by law and to pay the cost.
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> SO ORDERED.[14]

Ruling of the Court of Appeals:

Pulido appealed his conviction to the appellate court on the ground that the first element of the crime, *i.e.,* the subsistence of a valid marriage, was absent. Pulido maintained that his first marriage to Arcon is void *ab initio* for lack of a marriage license while his marriage with Baleda is also void since

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[11] Id. at 172-173.
[12] Id.
[13] Id. at 183-187.
[14] Id. at 187.

there was no marriage ceremony performed. In any case, his marriage with Baleda has already been judicially declared as void *ab initio* even before the filing of the Information for Bigamy against him and Baleda with the trial court.

The appellate court, in its assailed March 17, 2015 Decision,[15] sustained petitioner's conviction but modified the penalty. The CA also found 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, and without first having obtained a judicial declaration of the nullity of the prior marriage with Arcon.

The CA was not convinced of Pulido's contention that the first marriage was void for lack of a marriage license. It noted that their Marriage Contract dated September 5, 1983[16] indicated Marriage License No. 7240107. To be considered void due to lack of marriage license, it must be apparent on the marriage contract and supported by a certification from the Civil Registrar that no such marriage license was issued, which are not obtaining in the case at bar.

The Certification dated November 22, 2007 issued by the Civil Registrar did not specifically attest that no marriage license was issued to Pulido and Arcon. Instead, the document merely stated that there was no record of a marriage license and application of Pulido and Arcon on account of a probable termite infestation of the documents from 1979-1983. Also, that the marriage license was obtained only on the day of the marriage itself did not render the marriage void *ab initio* since it is merely an irregularity which does not affect the validity of marriage.

The appellate court further ruled that even assuming that the first marriage was void for lack of a marriage license, one may still be held liable for bigamy if he/she enters into a subsequent marriage without first obtaining a judicial declaration of nullity of the prior marriage. Bigamy was consummated the moment Pulido entered into the second marriage without his marriage with Arcon being first judicially declared null and void.

The appellate court anchored its ruling on Article 40 of the Family Code which requires one to first secure a judicial declaration of nullity of marriage prior to contracting a subsequent marriage. It held that pursuant to *Jarillo v. People* (*Jarillo*),[17] Article 40 applies even if the marriage of Pulido with Arcon was governed by the Civil Code. Rules of procedure should be given retroactive effect in so far as it does not prejudice or impair vested or acquired rights. The bigamist cannot obtain and use the subsequent judicial declaration

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[15] CA *rollo*, pp. 99-113.
[16] Records, p. 124.
[17] 636 Phil. 25 (2010).

of nullity of his or her prior marriage to avoid his or her prosecution for bigamy.

Likewise, the subsequent declaration of nullity of his second marriage with Baleda would not exonerate him from criminal liability. Their Certificate of Marriage dated July 31, 1995 signed by both Pulido and Baleda clearly indicated that they appeared before Reverend Conrado P. Ramos on their own free will to take each other as husband and wife. As a public document, the marriage contract is presumed to be *prima facie* correct pursuant to Section 44, Rule 130 of the Rules of Court.

Moreover, the subsequent judicial declaration of the second marriage for being bigamous in nature does not bar the prosecution of Pulido for the crime of bigamy. Jurisprudence dictates that one may still be charged with bigamy even if the second marriage is subsequently declared as null and void so long as the first marriage was still subsisting during the celebration of the second marriage. This is to deter parties from deliberately and consciously entering into a flawed marital contract and thus escape the consequences of contracting multiple marriages.

The CA ultimately affirmed the June 22, 2009 Decision of the RTC but with modification as to the penalty imposed, to wit:

> WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 275, Las Piñas, dated June 22, 2009, which adjudged accused-appellant guilty beyond reasonable doubt of the crime of bigamy is hereby **AFFIRMED** with **MODIFICATION** as to the indeterminate penalty imposed on appellant. Accordingly, Luisito G. Pulido is hereby sentenced to suffer an indeterminate prison term of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to **eight (8) years and one (1) day of *prision mayor* as maximum**.
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> SO ORDERED.[18]

Pulido filed a Motion for Reconsideration which was denied by the appellate court in its August 18, 2015 Resolution. Hence, this Petition for Review on *Certiorari* under Rule 45.

Meanwhile, in its November 27, 2015 judgment, [19] the RTC, Branch 22 of Imus, Cavite, declared Pulido's marriage to Arcon void from the beginning. The said Decision became final and executory as per Certificate of Finality dated May 11, 2016.[20] Thereafter, on June 29, 2016, the RTC issued the Decree of Absolute Nullity of Marriage[21] confirming the absolute nullity of marriage between Pulido and Arcon.

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[18] CA *rollo*, p. 112.
[19] *Rollo*, pp. 74-80.
[20] Id. at 112.
[21] Id. at 115-116.

Issues

For adjudication by the Court are the following issues:

(a) Whether Article 40 of the Family Code applies to the instant case, considering that Pulido's first marriage was contracted during the Civil Code and his second marriage was celebrated during the effectivity of the Family Code;

(b) Whether a judicial declaration of nullity of the prior marriage as provided under Article 40 of the Family Code may be invoked as a defense in Bigamy cases; and

(c) In the affirmative, whether a judicial declaration of nullity of marriage secured after the celebration of the second marriage should be considered a valid defense in Bigamy cases.

Petitioner's Arguments:

In the main, Pulido contends that the appellate court should have overturned his conviction in view of the absence of an element of bigamy, *i.e.*, that the offender's first marriage be legally subsisting at the time he contracts the second marriage, since the first marriage is void due to the absence of a marriage license. He asserts that the retroactive application by the trial court and the appellate court of Article 40 of the Family Code to his case, when the governing law at the time of his first marriage was the Civil Code, ran afoul of the constitutional prohibition against *ex post facto* legislation.

Arguments of the Office of the Solicitor General (OSG):

In its Comment,[22] the OSG stresses that Article 40 of the Family Code applies to the instant case since Pulido's subsequent and bigamous marriage was contracted in 1995 when the Family Code was already in full effect. Thus, unlike the cases cited by petitioner wherein both marriages were contracted prior to the effectivity of the Family Code, Pulido is required to obtain a prior judicial declaration of nullity of his marriage with Arcon as a condition precedent to contracting a subsequent marriage with Baleda. Hence, the fact that Pulido secured a judicial declaration of nullity of his marriage is immaterial since the crime of Bigamy has already been consummated.

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[22] Id. at 91-98.

The OSG maintains that the appellate court correctly ruled that the certificate of marriage was the best evidence to prove that a marriage ceremony took place, and that the subsequent judicial declaration of Pulido and Baleda's marriage may not be used to exonerate himself from criminal liability.

Our Ruling

This case provides us the opportune occasion to revisit and examine our earlier pronouncements that a judicial declaration of the absolute nullity of a prior void *ab initio* marriage secured prior to remarriage is required before a prior void *ab initio* marriage may be considered a valid defense in the prosecution of bigamy. For resolution of this Court is the subsequent judicial declaration of the absolute nullity of Pulido's first marriage with Arcon which he presented as a defense in the criminal prosecution for bigamy against him.

After a careful scrutiny of the records and rigorous reexamination of the applicable law and jurisprudence, we find that there is enough basis to abandon our earlier pronouncement and now hold that a **void *ab initio*** marriage is **a valid defense** in the prosecution for bigamy **even without a judicial declaration of absolute nullity**. Consequently, a judicial declaration of absolute nullity of either the first and second marriages obtained by the accused is considered a valid defense in bigamy.

In consonance with this, we find the petition meritorious. Hence, Pulido's acquittal from the crime of Bigamy is warranted.

Bigamy - Definition and Elements:

Article 349 of the Revised Penal Code (RPC) defines and penalizes Bigamy, *viz.*:

> Art. 349. *Bigamy.* — The penalty of *prision 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 above provision was taken from Article 486 of the Spanish Penal Code, which reads:

> *El que contrajere Segundo o ulterior matrimonio sin hallarse legÃ-timamente disuelto el anterior, serÃ¡ castigado con la pena de prision mayor. . . .*[23]

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[23] *Manuel v. People*, 512 Phil. 818, 833 (2005).

The rationale for prosecuting an individual who contracted a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead, is to preserve and ensure the juridical tie of marriage established by law.[24] For one to be held guilty of bigamy, the prosecution must prove the following: (a) that the offender has been legally married; (b) that the first 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 Civil Code; (c) that he or she contracts a second or subsequent marriage; and (d) that the second or subsequent marriage has all the essential requisites for validity.[25] It is vital in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage.[26]

It is undisputed that Pulido married Arcon on September 5, 1983. Thereafter, he contracted a second marriage with Baleda on July 31, 1995 without having his first marriage with Arcon legally dissolved. Pulido and Baleda's marriage has all the essential requisites for validity had it not for the existing first marriage.

Thereafter, Pulido's first marriage with Arcon and second marriage with Baleda were judicially declared void for lack of a valid marriage license and for being bigamous, respectively. Pulido interposed the defense that the subsequent judicial declaration of nullity of his first marriage should exculpate him from criminal liability for bigamy.

Thus, the main issue for consideration of this Court is the necessity of securing a judicial declaration of absolute nullity as a valid defense in the criminal prosecution for bigamy.

Is a judicial declaration of nullity of marriage necessary to establish the invalidity of a void *ab initio* marriage in a bigamy prosecution?

a. Prior to the effectivity of the Family Code, a void *ab initio* marriage can be raised as a defense in a bigamy case even without a judicial declaration of its nullity.

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[24] Id. citing CUELLO CALON, DERECHO PENAL REFORMADO, VOL. V, 627.

[25] *Vitangcol v. People,* 778 Phil. 326, 334 (2016) citing *Tenebro v. Court of Appeals*, 467 Phil. 723, 738 (2004).

[26] *Montañez v. Cipriano,* 697 Phil. 586, 596 (2012) citing *Manuel v. People*, supra note 23, at 833.

The validity of the second marriage is a prejudicial question to the criminal prosecution for bigamy.

Prior to the effectivity of the Family Code, the Court has inconsistent pronouncements concerning the necessity of a judicial declaration of nullity of the prior void marriage as a defense in a bigamy case.

In *People v. Mendoza*[27] (*Mendoza*) and in *People v. Aragon*[28] (*Aragon*), this Court ruled that **no judicial decree is necessary** to establish the invalidity of a prior void marriage as a defense in the case of Bigamy, as distinguished from mere annullable or voidable marriages.

In both *Mendoza* and *Aragon,* the accused contracted a second marriage during the subsistence of his first marriage. Thereafter, the accused entered into a third marriage after the death of his first wife but during the subsistence of the second marriage. The Court ruled that the second marriage is void for having been contracted during the existence of the first marriage. Hence, there is no need for a judicial declaration that said second marriage is void. Consequently, with the second marriage being void and the first marriage terminated due to the death of the first wife, the accused did not commit bigamy when he contracted a third marriage.[29]

However, in *Gomez v. Lipana*[30] (*Gomez*) and *Vda. de Consuegra v. Government Service Insurance System*[31] (*Consuegra*), the Court deviated from its previous pronouncements in *Mendoza* and *Aragon* when it declared that a judicial declaration of nullity of the second marriage is necessary even though it is presumed to be null and void for it was contracted during the subsistence of a prior marriage. Subsequently, in *Odayat v. Amante*[32] (*Odayat*) and *Tolentino v. Paras*,[33] the Court again reverted to the doctrine laid down in *Mendoza* and *Aragon.*

Nonetheless, in *Wiegel v. Sempio-Diy*[34] (*Wiegel*), the Court ruled that there is a need for a judicial declaration of nullity of a void marriage before one can enter into another marriage. Then, in *Yap v. Court of Appeals*,[35] the Court again held otherwise.

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27 95 Phil. 845 (1954).
28 100 Phil. 1033 (1957).
29 *Ty v. Court of Appeals,* 399 Phil. 647, 658-659 (2000) citing *People v. Mendoza*, supra note 27 and *People v. Aragon*, supra note 28.
30 144 Phil. 514 (1970).
31 147 Phil. 269 (1971).
32 168 Phil. 1 (1977).
33 207 Phil. 458 (1983).
34 227 Phil. 457 (1986).
35 229 Phil. 251 (1986).

However, in *Apiag v. Cantero*[36] and *Ty v. Court of Appeals*,[37] this Court clarified that the requirement of a judicial decree of nullity does not apply to marriages that were celebrated **before the effectivity of the Family Code,** which continue to be governed by *Mendoza, Aragon* and *Odayat* wherein a void *ab initio* marriage can be raised as a defense in a bigamy case even without a judicial declaration of its nullity.

As to the nullity of the second marriage, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) pointed out that in *People v. Mora Dumpo (Dumpo)*[38] and *People v. Lara (Lara)*,[39] the Court decided on the issue of the validity of the second marriage in the same criminal proceeding for bigamy to determine the guilt of the accused, *i.e.* if he contracted a valid second marriage during the subsistence of the first marriage. Patently, the Court allowed the accused in *Dumpo* and *Lara* to interpose the defense of a void *ab initio* second marriage other than it being bigamous in the criminal prosecution for bigamy.

However, in *Merced v. Diez (Merced)*,[40] the Court recognized the action to annul the second marriage as a prejudicial question in a prosecution for bigamy, to wit:

> One of the essential elements of a valid marriage is that the consent thereto of the contracting parties must be freely and voluntarily given. Without the element of consent a marriage would be illegal and void. (Section 29, Act No. 3613, otherwise known as the Marriage Law.) **But the question of invalidity cannot ordinarily be decided in the criminal action for bigamy but in a civil action for annulment. Since the validity of the second marriage, subject of the action for bigamy, cannot be determined in the criminal case and since prosecution for bigamy does not lie unless the elements of the second marriage appear to exist, it is necessary that a decision in a civil action to the effect that the second marriage contains all the essentials of a marriage must first be secured**.
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> We have, therefore, in the case at bar, the issue of the validity of the second marriage, which must be determined before hand in the civil action, before the criminal action can proceed. We have a situation where the issue of the validity of the second marriage can be determined or must first be determined in the civil action before the criminal action for bigamy can be prosecuted. **The question of the validity of the second marriage is, therefore, a prejudicial question, because determination of the validity of the second marriage is determinable in the civil action and must precede the criminal action for bigamy**.[41] (Emphasis supplied.)

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36 335 Phil. 511 (1997).
37 *Ty v. Court of Appeals,* supra note 29.
38 62 Phil. 246 (1935).
39 51 O.G. 4079, February 14, 1955.
40 *Merced v. Diez,* 109 Phil. 155 (1960).
41 Id. at 160.

In *Zapanta v. Montesa (Zapanta)*,[42] the Court suspended the proceedings in the criminal case for bigamy because of a subsequent civil action filed by the accused to annul his second marriage on the ground of vitiated consent. The Court held that:

> We have heretofore defined a prejudicial question as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal (People *vs.* Aragon, G.R. No. L-5930, February 17, 1954). The prejudicial question — we further said — must be determinative of the case before the court, and jurisdiction to try the same must be lodged in another court (People vs. Aragon, *supra*). These requisites are present in the case at bar. Should the question for annulment of the second marriage pending in the Court of First Instance of Pampanga prosper on the ground that, according to the evidence, petitioner's consent thereto was obtained by means of duress, force and intimidation, it is obvious that his act was involuntary and can not be the basis of his conviction for the crime of bigamy with which he was charged in the Court of First Instance of Bulacan. **Thus the issue involved in the action for the annulment of the second marriage is determinative of petitioner's guilt or innocence of the crime of bigamy**. On the other hand, there can be no question that the annulment of petitioner's marriage with respondent Yco on the grounds relied upon in the complaint filed in the Court of First Instance of Pampanga is within the jurisdiction of said court.
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> **In the Aragon case already mentioned (*supra*) we held that if the defendant in a case for bigamy claims that the first marriage is void and the right to decide such validity is vested in another court, the civil action for annulment must first be decided before the action for bigamy can proceed. There is no reason not to apply the same rule when the contention of the accused is that the second marriage is void on the ground that he entered into it because of duress, force and intimidation**.[43] (Emphasis supplied.)

However, in *Landicho v. Relova*[44] (*Landicho*) and reiterated in *Donato v. Luna*,[45] the Court clarified that it must be shown that the accused's consent must be the one whose consent was obtained by means of duress, force and intimidation to show that the act in the second marriage is involuntary before he or she can raise the action for nullity of second marriage as a prejudicial question in the prosecution for bigamy.[46]

Then, in *De la Cruz v. Judge Ejercito (De la Cruz)*,[47] the Court again dismissed the bigamy case as "moot and untenable" in view of the final judgment obtained by the accused annulling the second marriage. The finding

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42 114 Phil. 428 (1962).
43 Id. at 430-431.
44 130 Phil. 745 (1968).
45 243 Phil. 584 (1988).
46 *Landicho v. Relova*, supra, at 749-750.
47 160-A Phil. 669 (1975).

in the annulment case that the second marriage was a nullity is determinative of the accused's innocence in the bigamy case.[48]

Thus, when both the prior and subsequent marriages were contracted prior to the effectivity of the Family Code, a void *ab initio* marriage can be raised as a defense in a bigamy case even without a judicial declaration of its nullity. Nonetheless, the Court recognized that an action for nullity of the second marriage is a prejudicial question to the criminal prosecution for bigamy.

b. Article 40 of the Family Code applies retroactively on marriages celebrated before the Family Code insofar as it does not prejudice or impair vested or acquired rights.

Thus, a judicial declaration of nullity is required for prior marriages contracted before the effectivity of the Family Code but only for purposes of remarriage.

Upon the enactment of the Family Code on August 3, 1988, the doctrine laid down in *Gomez*, *Consuegra* and *Wiegel* that there is a need for a judicial declaration of nullity of a prior "void" marriage was encapsulated in Article 40, which reads:

> 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.

The prevailing rule, therefore, is that even if the marriage is void, a final judgment declaring it void for purposes of remarriage is required. The Commission, in drafting Article 40, considered the Court's ruling in *Landicho*[49] that parties to a marriage should not be permitted to judge for themselves its nullity; only competent courts have such authority.[50] In *Domingo v. Court of Appeals* (*Domingo*),[51] the Court elucidated on the intent behind the provision, thus:

> "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.** xxx

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48 Id. at 671.
49 *Landicho v. Relova,* supra note 44.
50 *Vitangcol v. People*, supra note 25, at 341-342 citing *Landicho v. Relova,* id. at 750.
51 297 Phil. 642 (1993).

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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:

> 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.*** xxx
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> After further deliberation, Justice Puno suggested that they go back to the original wording of the provision as follows:
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> > 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."[52] (Emphasis supplied.)

To repeat, Pulido's first marriage with Arcon was contracted in 1983 or before the effectivity of the Family Code while his second marriage with Baleda was celebrated in 1995, during the effectivity of the said law. Pulido assails the retroactive application of Article 40 of the Family Code on his case which requires him to obtain a judicial declaration of absolute nullity before he can contract another marriage.

When the prior marriage was contracted prior to the effectivity of the Family Code while the subsequent marriage was contracted during the effectivity of the said law, we recognize the retroactive application of Article 40 of the Family Code **but only insofar as it does not prejudice or impair vested or acquired rights.** In *Atienza v. Brillantes, Jr.*,[53] and reiterated in *Jarillo*[54] and in *Montañez v. Cipriano* (*Montañez*),[55] we declared thus:

> As far back as 1995, in *Atienza v. Brillantes, Jr.*, the Court already made the declaration that **Article 40, which is a rule of procedure, should be applied retroactively because Article 256 of the Family Code itself provides that said "Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights."** The Court went on to explain, thus:
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> > The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. The reason is that as a general rule, no vested right may attach to, nor arise from, procedural laws.[56] (Emphasis supplied.)

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[52] Id. at 650-652 citing Minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees dated August 23, 1986, pp. 4-7.

[53] 312 Phil. 939 (1995).

[54] *Jarillo v. People*, supra note 17, at 26-27.

[55] *Montañez v. Cipriano*, supra note 26.

[56] Id. at 599-600.

Applying the foregoing jurisprudence and keeping in mind its purpose, we hold that Article 40 has retroactive application on marriages contracted prior to the effectivity of the Family Code **but only for the purpose of remarriage**, as the parties are not permitted to judge for themselves the nullity of their marriage. **In other words, in order to remarry, a judicial declaration of nullity is required for prior marriages contracted before the effectivity of the Family Code.** Without a judicial declaration of absolute nullity of the first marriage having been obtained, the second marriage is rendered void *ab initio* even though the first marriage is also considered void *ab initio*. The only basis for establishing the validity of the second marriage is the judicial decree of nullity of the first marriage.

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 *Mendoza, Aragon* and *Odayat* which are 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**.

In this case, 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. Hence, Pulido is required to obtain a judicial decree of absolute nullity of his prior void *ab initio* marriage but only for purposes of remarriage. As regards the bigamy case, however, Pulido may raise the defense of a void *ab initio* marriage even without obtaining a judicial declaration of absolute nullity.

c. Does the subsequent declaration of the nullity of the first and second marriages constitute a valid defense in bigamy?

We rule in the affirmative.

Notably, during the pendency of the bigamy case, Pulido obtained a judicial declaration of absolute nullity of his first marriage with Arcon which he presented as his defense. However, the courts *a quo*, relying on settled jurisprudence, denied the same and convicted him of bigamy.

We are not unmindful of the fact that we have consistently ruled in a long line of jurisprudence that a judicial declaration of absolute nullity obtained prior to the celebration of the second marriage is required as a valid defense in bigamy. Upon the enactment of the Family Code, specifically the requirement laid down in Article 40, we overturned our earlier rulings in *Mendoza*, *Aragon* and *Odayat* and declared that a subsequent judicial

declaration of nullity of the first marriage could not be considered as a valid defense in the prosecution for bigamy. Corollary, a judicial declaration obtained subsequent to the celebration of the second marriage is considered immaterial in the criminal prosecution for bigamy as relied upon by the courts *a quo* in the case at bar.

With regard to the second marriage, our earlier rulings in *Dumpo* and *Lara* were likewise overturned. In effect, *Merced*, *Zapanta* and *De la Cruz* declaring that an action for nullity of the second marriage is a prejudicial question to the prosecution for bigamy is abandoned. The existing rule, therefore, is that a judicial declaration of nullity of the second marriage is not a valid defense in bigamy nor a prejudicial question to a criminal action for bigamy.

Now, this Court has the timely opportunity to review and revisit the rationale of our earlier pronouncements, and therefore, adopt a more liberal view in favor of the accused. To start, a brief examination of our earlier rulings is in order.

In *Domingo,*[57] a declaration of the absolute nullity of a marriage was explicitly required either as a cause of action or a defense in view of the pronouncement in Article 40 of the Family Code. "[T]he requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy."[58] The policy behind the requirement for a judicial declaration is explained thus:

> **Marriage, a sacrosanct institution, declared by the Constitution as an "inviolable social institution, is the foundation of the family;" as such, it "shall be protected by the State."** In more explicit terms, the Family Code characterizes it as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life." So crucial are marriage and the family to the stability and peace of the nation that their "nature, consequences, and incidents are governed by law and not subject to stipulation." **As a matter of policy, therefore, the nullification of a marriage for the purpose of contracting another cannot be accomplished merely on the basis of the perception of both parties or of one that their union is so defective with respect to the essential requisites of a contract of marriage as to render it void ipso jure and with no legal effect - and nothing more. Were this so, this inviolable social institution would be reduced to a mockery and would rest on very shaky foundations indeed.** And the grounds for nullifying marriage would be as diverse and far-ranging as human ingenuity and fancy could conceive. **For such a socially significant institution, an official state pronouncement through the courts, and nothing less, will satisfy the exacting norms of society. Not only would**

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[57] *Domingo v. Court of Appeals,* supra note 51.

[58] Id. at 652 citing A.V. SEMPIO-DIY, HANDBOOK OF THE FAMILY CODE OF THE PHILIPPINES, 46 (1988).

> **such an open and public declaration by the courts definitively confirm the nullity of the contract of marriage, but the same would be easily verifiable through records accessible to everyone.**[59] (Emphasis supplied.)

Mercado v. Tan[60] (*Mercado*) reiterated the ruling in *Domingo* and abandoned the rulings in *Mendoza* and *Aragon* as the latter were already set aside by Article 40 of the Family Code. *Mercado* held that to allow the accused to subsequently obtain a judicial declaration of nullity of marriage would encourage delay in the prosecution of bigamy cases as the accused could simply file a petition to declare the previous marriage void and invoke the pendency of the action as a prejudicial question in the criminal case.[61] As ruled by the Court in *Mercado*, the subsequently acquired judicial declaration of absolute nullity of the first marriage is immaterial as the crime of bigamy had already been consummated:

> In the instant case, petitioner contracted a second marriage although there was yet no judicial declaration of nullity of his first marriage. In fact, he instituted the Petition to have the first marriage declared void only after complainant had filed a letter-complaint charging him with bigamy. **By contracting a second marriage while the first was still subsisting, he committed the acts punishable under Article 349 of the Revised Penal Code.**
>
> **That he subsequently obtained a judicial declaration of the nullity of the first marriage was immaterial. To repeat, the crime had already been consummated by then.** Moreover, his view effectively encourages delay in the prosecution of bigamy cases; an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.[62] (Emphasis supplied.)

Marbella-Bobis v. Bobis[63] (*Marbella-Bobis*) held that without a judicial declaration of nullity, the first marriage is presumed to be subsisting and for all legal intents and purposes, the parties are considered as married at the time the second marriage was celebrated.[64] Hence, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy.[65] Thus, the Court declared that:

> In the light of Article 40 of the Family Code, respondent, without first having obtained the judicial declaration of nullity of the first marriage, cannot be said to have validly entered into the second marriage. **Per current jurisprudence, a marriage though void still needs a judicial declaration of such fact before any party can marry again; otherwise the second marriage**

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59 Id. at 654.
60 391 Phil. 809 (2000).
61 Id. at 824.
62 Id.
63 391 Phil. 648 (2000).
64 Id. at 656-657.
65 Id. at 655 citing *Landicho v. Relova*, supra note 44.

> **will also be void. The reason is that, without a judicial declaration of its nullity, the first marriage is presumed to be subsisting**. In the case at bar, respondent was for all legal intents and purposes regarded as a married man at the time he contracted his second marriage with petitioner. **Against this legal backdrop, any decision in the civil action for nullity would not erase the fact that respondent entered into a second marriage during the subsistence of a first marriage. Thus, a decision in the civil case is not essential to the determination of the criminal charge**. It is, therefore, not a prejudicial question. As stated above, respondent cannot be permitted to use his own malfeasance to defeat the criminal action against him.[66] (Emphasis supplied.)

Abunado v. People[67] (*Abunado*) again ruled that the subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated. Hence, under the law, a marriage, whether void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding.[68]

Jarillo[69] maintained the earlier pronouncements in *Marbella-Bobis* and *Abunado* and further declared that the subsequent judicial declaration of nullity of marriage could not be considered as a valid defense in the prosecution for bigamy. It declared that Article 349 of the RPC penalizes the mere act of contracting a second or subsequent marriage during the subsistence of a valid marriage.[70]

Montañez[71] held that the annulment of the first marriage on the ground of psychological incapacity does not justify the dismissal of the bigamy case. The parties to a marriage are not permitted to judge for themselves its nullity. So long as there is no such declaration of nullity, the presumption is that the marriage exists. Thus, a party who contracts a second marriage before a judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy.[72]

In *Teves v. People*,[73] the Court held that the filing of the petition for the declaration of nullity of the earlier marriage prior to the filing of information for bigamy cannot be allowed as a defense for the bigamy case. Criminal culpability attaches to the offender upon the commission of the offense, thus, liability instantly appends to him until extinguished as provided by law. The finality of the judicial declaration of nullity of the previous marriage cannot be made to retroact to the date of the bigamous marriage.[74]

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66 Id. at 656-657.
67 470 Phil. 420 (2004).
68 Id. at 430.
69 *Jarillo v. People*, supra note 17.
70 Id. at 27.
71 *Montañez v. Cipriano*, supra note 26.
72 Id. at 598-599.
73 671 Phil. 825 (2011).
74 Id. at 832-833

Antone v. Beronilla[75] (*Antone*) held that the declaration of nullity of the marriage obtained after the celebration of the subsequent marriage is immaterial for the purpose of establishing that the facts alleged in the information for bigamy do not constitute an offense. Neither may such be interposed as a defense by the accused in his motion to quash by way of exception to the established rule that facts contrary to the allegations in the information are matters of defense which may be raised only during the presentation of evidence.[76] *People v. Odtuhan*[77] reiterated the ruling in *Antone* that the time of the filing of the criminal complaint or information is material only for determining prescription and that obtaining a declaration of nullity of marriage before the filing of the complaint for bigamy is not a valid defense in the prosecution.[78]

In *Vitangcol v. People,*[79] the Court again ruled that even assuming that the first marriage was solemnized without a marriage license, the accused remains liable for bigamy as his first marriage was not judicially declared void nor his first wife judicially declared presumptively dead under the Civil Code.[80] To remove the requirement of judicial declaration of nullity would render Article 349 of the RPC useless as the bigamist would simply claim 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.[81]

Interestingly however, in *Morigo v. People* (*Morigo*),[82] the Court held that the marriage of Lucio and Lucia was considered a void and inexistent marriage, meaning there was no marriage to begin with, in view of the absence of an actual marriage ceremony performed by a solemnizing officer between the contracting parties. The Court declared that such declaration of nullity retroacts to the date of the first marriage.

Hence, for all intents and purposes, from the date of the declaration of the first marriage as void *ab initio* retroactive to the date of the celebration of the first marriage, the accused was considered never married under the eyes of the law. Consequently, with the declaration of nullity of the first marriage, the first element of bigamy, that is, that the accused must have been legally married, was lacking. Thus, the accused was acquitted based on the subsequent declaration of nullity of the first marriage as there was no first marriage to speak of.[83]

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75 652 Phil. 151 (2010).
76 Id. at 170.
77 714 Phil. 349 (2013).
78 Id. at 359.
79 *Vitangcol v. People*, supra note 25.
80 Id. at 341.
81 Id. at 342.
82 466 Phil. 1013 (2004).
83 Id. at 1023.

Morigo was distinguished from *Mercado* where, in the latter case, the first marriage was declared void *ab initio* for lack of a valid marriage license but the marriage was actually solemnized twice. Thus, in *Mercado*, the subsequent decree of absolute nullity of the first marriage was not considered a valid defense in the bigamy case. The main reason was that in *Mercado*, the first marriage appeared to have transpired although later declared void *ab initio* for lack of a valid marriage license while in *Morigo* no marriage ceremony at all was performed by a duly authorized solemnizing officer.[84] Although both first marriages were subsequently declared void *ab initio*, the rulings in *Morigo* and *Mercado* are at variance as to the effects and consequences of a void *ab initio* marriage.

With regard to a void *ab initio* second marriage, the Court declared in *Tenebro v. Court of Appeals*[85] (*Tenebro*) that the subsequent declaration of nullity of the second marriage is immaterial in the prosecution for bigamy, to wit:

> Petitioner makes much of the judicial declaration of the nullity of the second marriage on the ground of psychological incapacity, invoking Article 36 of the ***Family Code***. What petitioner fails to realize is that a declaration of the nullity of the second marriage on the ground of psychological incapacity is of absolutely no moment insofar as the State's penal laws are concerned.
>
> As a second or subsequent marriage contracted during the subsistence of petitioner's valid marriage to Villareyes, petitioner's marriage to Ancajas would be null and void *ab initio* completely regardless of petitioner's psychological capacity or incapacity. **Since a marriage contracted during the subsistence of a valid marriage is *automatically* void, the nullity of this second marriage is not *per se* an argument for the avoidance of criminal liability for bigamy.** Pertinently, Article 349 of the ***Revised Penal Code*** criminalizes "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". A plain reading of the law, therefore, would indicate that the provision penalizes *the mere act of contracting a second or a subsequent marriage during the subsistence of a valid marriage.*[86] (Emphasis supplied.)

Jarillo reiterated the ruling in *Tenebro* that a judicial declaration of nullity of the second marriage will not absolve the accused from the bigamy charge, thus:

> For the very same reasons elucidated in the above-quoted cases, petitioner's conviction of the crime of bigamy must be affirmed. The subsequent judicial declaration of nullity of petitioner's two marriages to Alocillo cannot be considered a valid defense in the crime of bigamy. The moment petitioner

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[84] Id. at 1023-1024.
[85] 467 Phil. 723 (2004).
[86] Id. at 742.

> contracted a second marriage without the previous one having been judicially declared null and void, the crime of bigamy was already consummated because at the time of the celebration of the second marriage, petitioner's marriage to Alocillo, which had not yet been declared null and void by a court of competent jurisdiction, was deemed valid and subsisting. **Neither would a judicial declaration of the nullity of petitioner's marriage to Uy make any difference. As held in *Tenebro*, "[s]ince a marriage contracted during the subsistence of a valid marriage is automatically void, the nullity of this second marriage is not *per se* an argument for the avoidance of criminal liability for bigamy**. . . . 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*".[87] (Emphasis supplied.)

Also, in *Nollora, Jr. v. People*[88] and *Lasanas v. People*,[89] the Court retold its ruling in *Tenebro* by declaring that a subsequently acquired judicial declaration of nullity of the second marriage cannot exculpate the accused from the criminal liability for bigamy. *Tenebro* and the succeeding cases, in effect, abandoned our rulings in *Dumpo* and *Lara,* which allowed the accused to interpose the defense of a void *ab initio* second marriage in the same criminal proceeding; and *Merced, Zapanta* and *De la Cruz* which recognized that the action for nullity of the second marriage is a prejudicial question to the criminal action for bigamy.

A thorough review of the foregoing rulings shows that the judicial declarations of absolute nullity of the first and second marriages obtained subsequent to the celebration of the second marriage are not valid defenses in the criminal prosecution for bigamy. The only valid defense recognized by the Court in the above-mentioned cases is a judicial declaration of absolute nullity of the first marriage obtained by the accused prior to the celebration of the second marriage.

After a careful consideration, this Court is constrained to abandon our earlier rulings that a judicial declaration of absolute nullity of the first and/or second marriages cannot be raised as a defense by the accused in a criminal prosecution for bigamy. We hold that a judicial declaration of absolute nullity is not necessary to prove a void *ab initio* prior and subsequent marriages in a bigamy case. Consequently, a judicial declaration of absolute nullity of the first and/or second marriages presented by the accused in the prosecution for bigamy is a valid defense, irrespective of the time within which they are secured.

The aforesaid conclusion is anchored on and justified by the retroactive effects of a void *ab initio* marriage, the legislative intent of Article 40 of the Family Code and the fundamental rules of construction governing penal laws.

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87 *Jarillo v. People*, 617 Phil. 45, 53-54 (2009).
88 *Nollora, Jr. v. People*, 672 Phil. 771 (2011).
89 *Lasanas v. People*, 736 Phil. 735 (2014).

Retroactive effects of a void *ab initio* marriage in criminal prosecutions for bigamy

The Family Code specifically provides that certain marriages are considered void *ab initio* namely, Articles 35, 36, 37, 38, 44 and 53. These marriages are void from the beginning due to the absence of any of the essential or formal requisites, for being incestuous, or by reason of public policy. Void marriages, like void contracts, are inexistent from the very beginning.[90] To all legal intents and purposes, the void *ab initio* marriage does not exist and the parties thereto, under the lens of the law, were never married.[91]

Thus, we ruled in *Niñal v. Bayadog*[92] (*Niñal*) that under ordinary circumstances, the effect of a void marriage, so far as concerns the conferment of legal rights upon the parties, is as though no marriage had ever taken place. A void marriage produces no legal effects except those declared by law concerning the properties of the alleged spouses, co-ownership or ownership through actual joint contribution, and its effect on the children born to void marriages as provided in Article 50 in relation to Articles 43 and 44 as well as Articles 51, 53, and 54 of the Family Code

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. Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage; the exception to this is Article 40 of the Family Code, which expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, and such absolute nullity can be based only on a final judgment to that effect.[93] However, it must be borne in mind that the requirement of Article 40 is merely for purposes of remarriage and does not affect the accused's right to collaterally attack the validity of the void *ab initio* marriage in criminal prosecution for bigamy.

In contrast, voidable marriages under Article 45 of the Family Code are considered valid and produces all its civil effects until it is set aside by a competent court in an action for annulment. It is capable of ratification and cannot be assailed collaterally except in a direct proceeding.[94] It is considered

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[90] *Abunado v. People*, supra note 67, at 434, Concurring Opinion of Associate Justice Antonio T. Carpio citing Associate Justice Jose C. Vitug's Civil Law, *Persons and Family Relations*, Vol. I, (2003 ed.)

[91] *Morigo v. People*, supra note 82, at 1023.

[92] 384 Phil. 661 (2000).

[93] Id. at 674-675.

[94] Id.

valid during its subsistence and only ceases upon the finality of the decree of annulment of a competent court. "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."[95] In this respect, the effects of a declaration of the nullity of a void marriage by a competent court *retroacts* to the date of the celebration thereof, since the spouses were considered never married under the lens of the law.

In *Castillo v. Castillo*,[96] we distinguished void and voidable marriages, thus:

> Under the Civil Code, a void marriage differs from a voidable marriage in the following ways: **(1) a void marriage is nonexistent — *i.e.*, there was no marriage from the beginning — while in a voidable marriage, the marriage is valid until annulled by a competent court; (2) a void marriage cannot be ratified, while a voidable marriage can be ratified by cohabitation; (3) being nonexistent, a void marriage can be collaterally attacked, while a voidable marriage cannot be collaterally attacked**; (4) in a void marriage, there is no conjugal partnership and the offspring are natural children by legal fiction, while in voidable marriage there is conjugal partnership and the children conceived before the decree of annulment are considered legitimate; and **(5) "in a void marriage no judicial decree to establish the invalidity is necessary," while in a voidable marriage there must be a judicial decree.**[97] (Emphasis supplied.)

Being inexistent under the eyes of the law, the nullity of a void marriage 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 spouses.[98] A void marriage is *ipso facto* void without need of any judicial declaration of nullity; the only recognized exception under existing law is Article 40 of the Family Code where a marriage void *ab initio* is deemed valid for purposes of remarriage, hence necessitating a judicial declaration of nullity before one can contract a subsequent marriage.

Clearly, when the first marriage is void *ab initio*, one of the essential elements of bigamy is absent, *i.e.* a prior valid marriage. There can be no crime when the very act which was penalized by the law, *i.e.* contracting another marriage during the subsistence of a prior legal or valid marriage, is

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[95] *Suntay v. Cojuangco-Suntay*, 360 Phil. 932, 944 (1998).

[96] 784 Phil. 667 (2016).

[97] Id. at 675 citing Eduardo P. Caguioa, *Comments and Cases on Civil Law (Civil Code of the Philippines)*, Vol. 1, 1967 Third Edition, p. 154.

[98] *Niñal v. Bayadog*, supra note 92, at 674.

not present. The existence and the validity of the first marriage being an essential element of the crime of bigamy, it is but logical that a conviction for said offense cannot be sustained where there is no first marriage to begin with.[99] Thus, an accused in a bigamy case should be allowed to raise the defense of a prior void *ab initio* marriage through competent evidence other than the judicial decree of nullity.

Apropos, with the retroactive effects of a void *ab initio* marriage, there is nothing to annul nor dissolve as the judicial declaration of nullity merely confirms the inexistence of such marriage. Thus, the second element of bigamy, *i.e.* that the former marriage has not been legally dissolved or annulled, is wanting in case of void *ab initio* prior marriage. What Article 349 of the RPC contemplates is contracting a subsequent marriage when a voidable or valid first marriage is still subsisting. As expounded by Associate Justice Estela M. Perlas-Bernabe, Article 349 of the RPC was patterned after the *Codigo Penal*, which was enacted when the law governing marriages was the Spanish Civil Code of 1889, which provides that marriages may be dissolved either through annulment or divorce. The term "former marriage", therefore, in the second element of bigamy refers to voidable or valid marriages which may be dissolved by annulment or divorce, respectively. Hence, Article 349 should be construed to pertain only to valid and voidable marriages.

In effect, when the accused contracts a second marriage without having the first marriage dissolved or annulled, the crime of bigamy is consummated as the valid or voidable first marriage still subsists without a decree of annulment by a competent court. In contrast, when the first marriage is void *ab initio*, the accused cannot be held liable for bigamy as the judicial declaration of its nullity is not tantamount to annulment nor dissolution but merely a declaration of a status or condition that no such marriage exists.

In the same manner, when the accused contracts a second or subsequent marriage that is void *ab initio*, other than it being bigamous, he/she cannot be held liable for bigamy as the effect of a void marriage signifies that the accused has not entered into a second or subsequent marriage, being inexistent from the beginning. Thus, the element, "that he or she contracts a second or subsequent marriage" is lacking. A subsequent judicial declaration of nullity of the second marriage merely confirms its inexistence and shall not render the accused liable for bigamy for entering such void marriage while the first marriage still subsists. Consequently, the accused in bigamy may validly raise a void *ab initio* second or subsequent marriage even without a judicial declaration of nullity.

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[99] *Morigo v. People*, supra note 82 at 1023.

True, a marriage is presumed to be valid even if the same is void *ab initio* without a judicial declaration of its absolute nullity in view of Article 40 of the Family Code. However, the accused in a bigamy case should not be denied the right to interpose the defense of a void *ab initio* marriage, which effectively retroacts to the date of the celebration of the first marriage.

Guided by the foregoing legal precepts, we find that our ruling in *Mendoza*, *Aragon* and *Odayat* is more consistent with the retroactive effects of a void *ab initio* marriage. However, the Court has since extended the application of Article 40 of the Family Code to criminal prosecutions for bigamy and overturned the principle laid down in *Mendoza*, *Aragon* and *Odayat* as well as in *Dumpo and Lara*. This restriction imposed on the accused wholly disregards the inexistent nature and retroactive effects of a void marriage. In view thereof, a revisit of the application of Article 40 of the Family Code to criminal prosecutions for bigamy is imperative.

Article 40 of the Family Code requires a judicial declaration of absolute nullity for purposes of remarriage but not as a defense in bigamy. Article 40 did not amend or repeal Article 349 of the RPC.

The Minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees discussed that the judicial declaration of absolute nullity of a previous marriage was required for the purpose of establishing the validity of the subsequent marriage and to ensure that parties to a marriage should not be permitted to judge for themselves its nullity, as only competent courts have such authority. *Domingo*, citing the minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees, elucidated on how the provisions of Article 40 of the Family Code were framed and the intent behind the requirement laid down therein, to wit:

> 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.
>
> "B. Article 39. —
>
> 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:

> 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*.

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."[100] (Emphasis supplied.)

It is worth noting that *Domingo* is originally a petition for judicial declaration of a void marriage and separation of property filed by the wife against the husband to recover certain real and personal properties. The main issue therein is whether the petition for declaration of absolute nullity is necessary in order for the wife to recover her allegedly exclusive real and personal properties. Hence, the Court clarifies that the requirement under Article 40, *i.e.* final judgment declaring the previous marriage void, need not be obtained only for purposes of remarriage. The word "solely" qualifies the "final judgment declaring such previous marriage void" and not "for purposes of remarriage."[101]

In effect, the judicial declaration of absolute nullity may be invoked in other instances for purposes other than remarriage, such as in action for liquidation, partition, distribution, and separation of property, custody and support of common children and delivery of presumptive legitimes. Nonetheless, *Domingo* declares that other evidence, testimonial or documentary, may also prove the absolute nullity of the previous marriage in the said instances. Hence, such previous void marriage need not be proved solely by an earlier final judgment of court declaring it void. In other words, for purposes of remarriage, the only evidence to prove a void marriage is the final judgment declaring its absolute nullity. In other cases, the absolute nullity of a marriage may be proved by evidence other than such judicial declaration. Thus, when one so desires to enter into another marriage when his or her previous marriage is still subsisting, he is required by law to prove that the previous one is an absolute nullity.[102] In fact, the Family Code requires the parties to a marriage to declare in the application for a marriage license if they were previously married; and how, when and where the such previous marriage was dissolved and annulled.[103]

Domingo did not specifically include criminal prosecutions for bigamy in the enumeration of instances where the absolute nullity of a marriage may be proved by evidence other than the judicial declaration of its nullity. However, the enumeration in *Domingo* did not purport to be an exhaustive list. Moreover, the discussion in the minutes plainly shows that the Civil Law and Family Committees did not intend to deprive the accused or defendant to raise the defense of the absolute nullity of a void *ab initio* marriage in the same criminal proceeding. The Joint Committees, in formulating Article 40,

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[100] *Domingo v. Court of Appeals*, supra note 51, at 649-652.
[101] Id. at 653.
[102] Id. at 653-654.
[103] Id. at 655.

primarily aimed to ensure the validity of the subsequent marriage sought to be contracted by one of the parties by requiring him or her to first obtain a judicial declaration of absolute nullity of his or her previous marriage.

Moreover, as aptly pointed out by Justice Caguioa, the Court, reading together the provisions of the Civil Code and Article 40 of the Family Code, held in *Niñal*[104] and reiterated in *Cariño v. Cariño*[105] that a void *ab initio* marriage can be subject of a collateral attack even in a criminal case:

> 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.[106] (Emphasis supplied.)

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[104] *Niñal v. Bayadog*, supra note 92.
[105] 403 Phil. 861 (2001).
[106] *Niñal v. Bayadog*, supra note 92, at 674-675.

Well-settled is the rule that an implied repeal is disfavored by the law.[107] A statute must be so construed as to harmonize all apparent conflicts, and give effect to all its provisions whenever possible.[108] *Interpretare et concordare leqibus est optimus interpretendi*, *i.e.*, every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence.[109] The purpose of Article 40 of the Family Code is not at all inconsistent nor irreconcilable with the criminal prosecutions for bigamy defined and penalized under Article 349 of the RPC. Neither does Article 40 explicitly or impliedly repeal Article 349 of the RPC.

Plainly, Article 40 of the Family Code does not categorically withhold from the accused the right to invoke the defense of a void *ab initio* marriage even without a judicial decree of absolute nullity in criminal prosecution for bigamy. To adopt a contrary stringent application would defy the principle that penal laws are strictly construed against the State and liberally in favor of the accused. Granted, the State has the right to preserve and protect the sanctity of marriage; this should not, however, be done at the expense of the presumption of innocence of the accused. What is penalized under Article 349 of the RPC is the act of contracting a subsequent marriage while the prior marriage was valid and subsisting. This simply connotes that this provision penalizes contracting of a voidable or valid marriage and not a void *ab initio* marriage.

Nothing in Article 40 mentions the effect thereof on the criminal liability of the accused in bigamy cases. It would indeed be unfair to withhold from the accused in a bigamy case the right and the opportunity to raise the defense of nullity of a void *ab initio* marriage when the law does not explicitly say so. Thus, to borrow Justice Caguioa's opinion, even with the enactment of Article 40, a void *ab initio* marriage remains a valid defense in bigamy, and a prior and separate judicial declaration of absolute nullity is not indispensable to establish the same.

We cannot simply disregard the effects of a void *ab initio* marriage and penalize the accused for bigamy despite the clear absence of a valid prior marriage on the mere speculation that this interpretation may be subject to abuse by those parties who deliberately and consciously enter into multiple marriages knowing them to be void and thereafter, evade prosecution on the pretext of a void *ab initio* marriage. It must be pointed out and emphasized that these deliberate acts are already penalized under Article 350 of the RPC which reads:

> ART. 350. *Marriage contracted against provisions of laws.* – The penalty of *prision correccional* in its medium and maximum periods shall be imposed

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[107] *People v. Antillon*, 200 Phil. 144, 149 (1982).
[108] Id.
[109] *Hagad v. Gozo-Dadole*, 321 Phil. 604, 614 (1995).

> 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. (Emphasis supplied.)

Thus, the dilemma sought to be prevented as reflected in several cases is nothing more but a mere speculation and should not be considered sufficient ground to sustain the erroneous conclusion that to allow the accused to collaterally attack a void *ab initio* marriage in bigamy cases would render nugatory Article 349 of the RPC. To reiterate, Article 349 of the RPC penalizes parties who contracted a valid or voidable second marriage when the first marriage, which may be valid or voidable, is still subsisting. In contrast, Article 350 of the RPC penalizes those who without being included in Article 349, contract a marriage knowing that the requirements of the law have not been complied with or in disregard of a legal impediment.

Thus, an accused who contracts a void *ab initio* marriage may escape liability under Article 349 as it strictly encompasses valid or voidable first and second marriages. However, the accused in contracting a marriage knowing that the requirements of the law have not been complied with or in disregard of a legal impediment may be covered and penalized under Article 350 which addresses the predicament that to permit the accused to use the defense of a void *ab initio* marriage or to present a judicial declaration of nullity in criminal prosecution for bigamy would make a mockery of the sanctity of marriage by entering into multiple marriages knowing it to be void and thereafter escape punishment under Article 349.

Furthermore, it bears noting that in *Tenebro*,[110] it was held that void *ab initio* marriages retroact to the date of the celebration of marriage but also produce legal effects and consequences[111] as expressly provided under the statute such as on property relations, inheritance, donations, insurance beneficiary, legitimacy of children, custody of children, and support of common children. *Tenebro* included the incurring of criminal liability for bigamy as one of the legal effects and consequences despite the fact that there is no express mention thereof in the Family Code or any statute. It is, thus, supercilious to hold that these legal effects and consequences include incurring criminal liability for bigamy without violating a fundamental principle in criminal law, that is, penal statues are strictly construed against the State and in favor of the accused. To hold otherwise would amount to judicial legislation which is obviously proscribed.

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[110] *Tenebro v. Court of Appeals*, supra note 85.
[111] Id. at 744.

Penal laws are strictly construed against the State and liberally in favor of the accused.

It is a time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused. Criminal law is rooted in the concept that there is no crime unless a law specifically calls for its punishment. Thus, courts must not bring cases within the provision of law that are not clearly embraced by it. The terms of the statute must clearly encompass the act committed by an accused for the latter to be held liable under the provision. Any ambiguity in the law will always be construed strictly against the state and in favor of the accused.[112]

The fundamental principle in applying and in interpreting criminal laws is to resolve all doubts in favor of the accused. *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 unless and until his guilt is established beyond reasonable doubt.[113] It is well-settled that the scope of a penal statute cannot be extended by good intention, implication, or even equity consideration.[114] Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation.[115]

When the Court is confronted with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him, the rule of lenity calls for the adoption of an interpretation which is more lenient to the accused.[116] In the instant case, to hold that a judicial declaration of absolute nullity is a necessity before an accused in criminal prosecution for bigamy may invoke his void *ab initio* marriage as a valid defense interprets Article 349 too liberally in favor of the State and too strictly against the accused, in violation of the rule of lenity and the rule on strict construction of penal laws. As quoted from the Dissent of Associate Justice Antonio T. Carpio in *Tenebro*:

> The principle of statutory construction that penal laws are liberally construed in favor of the accused and strictly against the State is deeply rooted in the need to protect constitutional guarantees. **This principle serves notice to the public that only those acts clearly and plainly prohibited in penal laws are subject to criminal sanctions. To expand penal laws beyond their clear and plain meaning is no longer fair notice to the public. Thus, the principle insures observance of due process of law.** The principle also prevents discriminatory application of penal laws. State prosecutors have no

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[112] *People v. Sullano*, 827 Phil. 613, 625 (2018).
[113] *Intestate Estate of Vda. de Carungcong v. People*, 626 Phil. 177, 200 (2010).
[114] *Lim Lao v.. Court of Appeals*, 340 Phil. 679, 690 (1997)
[115] *People v. Garcia*, 85 Phil. 651, 656 (1950) citing Statutory Construction, Crawford, pp. 460-462.
[116] *People v. Valdez*, 774 Phil. 723, 747 (2015).

> power to broaden arbitrarily the application of penal laws beyond the plain and common understanding of the people who are subject to their penalties. Hence, the principle insures equal protection of the law.
>
> **The principle is also rooted in the need to maintain the separation of powers by insuring that the legislature, and not the judiciary, defines crimes and prescribes their penalties.** As aptly stated by the U.S. Supreme Court, speaking through Chief Justice John Marshall, in *United. States v. Wiltberger*:
>
> > The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. **It is founded on the tenderness of the law for the rights of individuals**; and on the plain principle that the power of punishment is vested in the legislature, not in the judicial department. **It is the legislature, not the Court, which is to define a crime, and ordain its punishment.**[117] (Emphasis supplied.)

Nevertheless, we reiterate that the phrase "*for purposes of remarriage*" in Article 40 does not restrict the accused in a criminal case for bigamy, or parties in cases brought for purposes other than remarriage, from presenting a judicial declaration of nullity of their marriage in evidence. The framers of the Family Code included the qualifying phrase "*for purposes of remarriage*" in drafting Article 40 of the Family Code merely in recognition of the fact that there are actions other than for purposes of remarriage that are brought under the assumption that the marriage is valid, and to allow the defendants in the said actions to present evidence that the marriage is void to absolve themselves of liability.[118] Thus, the tenor of Article 40 of the Family Code is that for purposes of remarriage, the only legally acceptable basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes other than remarriage such as an action for liquidation, partition, distribution and separation of property between the erstwhile spouses, other evidence is also acceptable to prove the existence of grounds rendering such a previous marriage an absolute nullity.

Accordingly, Article 349 of the RPC and Article 40 of the Family Code should be harmonized and liberally construed towards the protection of the sanctity of marriage and the presumption of innocence of the accused. With the retroactive effects of a void *ab initio* marriage, the marriage is considered non-existent from the time of the celebration of marriage. Therefore, to penalize and impose suffering on an individual on the basis of a non-existent marriage renders our penal laws sorely vindictive and resentful.

All told, we hold that in criminal prosecutions for bigamy, the accused can validly interpose the defense of a void *ab initio* marriage even without obtaining a judicial declaration of absolute nullity. Consequently,

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[117] *Tenebro v. Court of Appeals*, supra note 85, at 762.
[118] *Domingo v. Court of Appeals*, supra note 51, at 653.

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.

Conclusion

Applying the foregoing, Pulido may validly raise the defense of a void *ab initio* marriage in the bigamy charge against him. In fact, he assails the validity of his marriage with Arcon on the absence of a valid marriage license as per the Certification dated December 8, 2008[119] issued by the Office of the Municipal Civil Registrar (Registrar) of Rosario, Cavite which states:

> This is to certify that **no marriage license # 7240107 issued on September 5, 1983 based on the availability of record book for marriage application found in this office.**
>
> This is to further certify that from the same available record book, an inclusion of name of certain Luisito Pulido and Nora Arcon as male and female, contracting party have applied for a marriage license on the date of August 8, 1983 under registry # 198 (1).
>
> No corresponding entry on the date of issuance of marriage license and marriage license number respectively have appeared on the said record book, as noted.
>
> However, no original document of the Marriage License and Marriage Application of Luisito Pulido could be presented. Possibilities that the said documents were one of among unnumbered marriage application and marriage license that were eaten by termites.
>
> x x x x (Emphasis supplied.)[120]

As can be gleaned from the foregoing, Pulido and Arcon applied for a marriage license on August 8, 1983 with Registry No. 198 (1). However, the Registrar noted that there was no record of entry of: (a) the date of issuance of a marriage license; and (b) the marriage license number in the record book for marriage application. The original documents of the marriage license and marriage application cannot be retrieved nor found in their custody. However, the Registrar states that these documents could possibly be among those unnumbered marriage application and marriage license that were destroyed due to termite infestation.

To note, the Registrar did not categorically declare that a marriage license was issued to Pulido and Arcon nor that it was issued but was destroyed due to termite infestation. It bears stressing that the Registrar found no entry of its date of issuance and license number in its record book which will likely explain why the original document of the marriage license could

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[119] Records, p. 175.
[120] Id.

not be found in its custody. With the absence of a valid marriage license, a reasonable doubt arises as to existence of a prior valid marriage, *i.e.* Pulido's first marriage with Arcon, which is one of the elements of bigamy

Verily, the marriage contract is the *prima facie* evidence of the facts stated therein.[121] "*Prima facie* is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense and which if not rebutted or contradicted, will remain sufficient."[122] However, while Pulido and Arcon's Marriage Contract[123] bears a marriage license number issued on September 5, 1983, there is doubt as to the fact of its existence and issuance as per Certification dated December 8, 2008, which essentially affects the validity of their marriage. Thus, there exists a reasonable doubt whether indeed Pulido and Arcon had a marriage license when they entered into marriage on September 5, 1983.

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 on May 11, 2016.[124] On June 29, 2016, the RTC issued a Decree of Absolute Nullity of Marriage[125] which effectively retroacts to the date of the celebration of Pulido and Arcon's marriage, *i.e.* on September 5, 1983. This connotes that Pulido and Arcon were never married under the eyes of the law.

Where the discrepancies in the evidence are such as to give rise to a reasonable doubt, the accused should be acquitted.[126] "[T]he overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his/[her] guilt."[127]

The quantum of evidence required in criminal cases is proof beyond reasonable doubt. Section 2 of Rule 133 of the 1997 Rules of Court provides that "[p]roof beyond reasonable doubt does not mean such 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." To overcome the accused's constitutional presumption of innocence, the prosecution must prove that a crime was committed and that the accused is the person responsible.[128]

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

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[121] 1997 RULES OF COURT, RULE 130, SEC. 44.
[122] *Calimag v. Heirs of Silvestra N. Macapaz*, 786 Phil. 59, 72 (2016) citing *Tan, Jr. v. Hosana*, 780 Phil. 258, 271 (2016).
[123] Records, p. 10.
[124] *Rollo*, p. 112.
[125] Id. at 115-116.
[126] *U.S. v. Jose*, 1 Phil. 402, 404 (1902).
[127] *People v. Divina*, 440 Phil. 72, 79 (2002) citing *People v. Baulite*, 419 Phil. 191, 198 (2001).
[128] *People v. Caranguian*, 390 Phil. 519, 525-526 (2000).

judicial declaration of nullity of Pulido and Arcon's marriage, the prosecution failed to prove that the crime of bigamy is committed. Therefore, the acquittal of Pulido from the bigamy charge is warranted.

Needless to say, as to the absolute nullity of his second marriage with Baleda, it was declared void *ab initio* because of being bigamous and not because it lacked any of the essential requisites of a marriage. Hence, petitioner cannot use the same as a defense in his prosecution for bigamy.

Summary:

To summarize and for future guidance, **the parties are not required to obtain a judicial declaration of absolute nullity of a void *ab initio* first and subsequent marriages in order to raise it as a defense in a bigamy case.** The same rule now applies to all marriages celebrated under the Civil Code and the Family Code. Article 40 of the Family Code did not amend Article 349 of the RPC, and thus, did not deny the accused the right to collaterally attack the validity of a void *ab initio* marriage in the criminal prosecution for bigamy.

However, if the **first marriage** is merely **voidable**, the accused cannot interpose an annulment decree as a defense in the criminal prosecution for bigamy since the voidable first marriage is considered valid and subsisting when the second marriage was contracted. The crime of bigamy, therefore, is consummated when the second marriage was celebrated during the subsistence of the voidable first marriage. The same rule applies if the **second marriage** is merely considered as voidable.

To our mind, it is time to abandon the earlier precedents and adopt a more liberal view that a void *ab initio* marriage can be used as a defense in bigamy even without a separate judicial declaration of absolute nullity. The accused may present testimonial or documentary evidence such as the judicial declaration of absolute nullity of the first and/or subsequent void *ab initio* marriages in the criminal prosecution for bigamy. The said view is more in accord with the retroactive effects of a void *ab initio* marriage, the purpose of and legislative intent behind Article 40 of the Family Code, and the rule on statutory construction of penal laws. Therefore, the absence of a "prior valid marriage" and the subsequent judicial declaration of absolute nullity of his first marriage, Pulido is hereby acquitted from the crime of Bigamy charged against him.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED.** The March 17, 2015 Decision and August 18, 2015 Resolution of the Court of Appeals in CA-G.R. CR No. 33008 are hereby **REVERSED** and **SET ASIDE.** Petitioner Luisito G. Pulido is **ACQUITTED.**

Let entry of judgment be issued.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

Please see Concurring opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

Please See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

See Concurring Opinion

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice