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SECOND DIVISION

[G.R. No. L-40895. November 6, 1975]

MILAGROS DE LA CRUZ, *petitioner, vs.* **HON. JUDGE BIENVENIDO EJERCITO, Court of First Instance of Pampanga and Angeles City, Branch IV; TEODORO DAVID, City Fiscal of Angeles City, and PEOPLE OF THE PHILIPPINES, thru the Office of the SOLICITOR GENERAL,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; BIGAMY; ANNULMENT OF SECOND MARRIAGE PRECLUDES RENDITION OF A VERDICT THAT DEFENDANT COMMITTED BIGAMY.** — The finding in the annulment case that the second marriage contracted by the accused was a nullity is determinative of her innocence and precludes the rendition of a verdict that she committed bigamy. To try the criminal case in the face of such a finding would be unwarranted.

2. **ID.; ID.; ANNULMENT OF SECOND MARRIAGE RENDERS MOOT THE PROSECUTION FOR BIGAMY.** — The annulment of the second marriage, upon which the prosecution for bigamy is based, renders moot or untenable the bigamy case, because one element of bigamy is that the alleged second marriage, having all the requisites, would be valid were it not for the subsistence of the first marriage. It is essential "*que el segundo matrimonio 'ha de constituir un acto solemne en que concurran los requisitos exigidos para la existencia del sacramento o del contrato.*'" Thus, it is necessary in a prosecution for bigamy that the second marriage be valid if its validity was questioned in a civil action. Even if the decree annulling the second marriage is questionable or erroneous because it was issued in a judgment by default, still that would not prevent the decree from having legal effect. "An erroneous judgment is not a void judgment."

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APPEARANCES OF COUNSEL

C. S. Gaddi Law Office and *Maximino Q. Canlas* for petitioner.
Solicitor General Estelito P. Mendoza, Assistant Solicitor General Eulogio Raquel-Santos and *Solicitor Tomas M. Dilig & Fiscal Eller Dula Torres* for respondent.

DECISION

AQUINO, *J.*:

On May 20, 1974 Milagros de la Cruz was charged with bigamy in the Court of First Instance of Pampanga, Angeles City Branch IV for having married Sergeant Dominick L. Gaccino on September 15, 1973 while her prior marriage to Teodoro G. David was undissolved. The information was filed at the instance of her first husband (Criminal Case No. 3128).

On August 1, 1974 Milagros de la Cruz filed in the same court at its San Fernando Branch III a complaint for the annulment of her marriage to Sergeant Gaccino on the ground of duress (Civil Case No. 4188).

Defendant Gaccino did not answer the complaint. Judge Mariano Castañeda, Jr. ordered the Provincial Fiscal to investigate whether there was a collusion between the parties. A special counsel of the Fiscal's office reported that there was no collusion.

On December 16, 1974 Judge Castañeda rendered a decision annulling the marriage of Milagros de la Cruz to Gaccino. No appeal was taken from that decision. It became final. In view of the annulment of her second marriage, Milagros de la Cruz filed on January 27, 1975 a motion to dismiss the bigamy charge. The private prosecutor and the prosecuting fiscal opposed the motion.

Judge Bienvenido Ejercito denied it in his order of May 27, 1975 on the ground that the decision in the annulment case is not controlling in the criminal case because the parties and the issues in the two cases are not the same.

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That refusal of Judge Ejercito to dismiss the bigamy case, notwithstanding the judicial pronouncement that her second marriage was a nullity, prompted Milagros de la Cruz to file the instant special civil action of *certiorari* and prohibition.

The issue is whether the bigamy case became moot or untenable after the second marriage, on which the prosecution for bigamy is based, was annulled.

The City Fiscal of Angeles City contends that the lower court acted correctly in denying the motion to dismiss the bigamy charge. He argues that the decision in the annulment case should be set up as a defense by Milagros de la Cruz during the trial and that it would not justify the outright dismissal of the criminal case.

On the other hand, the Solicitor General manifested that the stand of Milagros de la Cruz should be sustained because one element of bigamy is that the alleged second marriage, having all the requisites, would be valid were it not for the subsistence of the first marriage (*People vs. Mora Dumpo*, 62 Phil. 246, 248; *Merced vs. Hon. Diez,* 109 Phil. 155; *Zapanta vs. Montesa*, 114 Phil. 1227).

We hold that the finding in the annulment case that the second marriage contracted by Milagros de la Cruz with Sergeant Gaccino was a nullity is determinative of her innocence and precludes the rendition of a verdict that she committed bigamy. To try the criminal case in the face of such a finding would be unwarranted.

As noted by Groizard, it is essential "*que el segundo matrimonio 'ha de constituir un acto solemne en que concurran los requisitos exigidos para la existencia del sacramento o del contrato'*" (2 Cuello Calon, Derecho Penal, 12th ed., p. 675, note 2). As pointed out in the *Merced* case, *supra*, it is necessary in a prosecution for bigamy that the second marriage be declared valid if its validity was questioned in a civil action.

And even supposing *arguendo* that the decree annulling the second marriage was questionable or erroneous because it was issued in a judgment by default, still that would not prevent the

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decree from having legal effect. "An erroneous judgment is not a void judgment" (*Chereau vs. Fuentebella,* 43 Phil. 216).

WHEREFORE, the lower court's order of May 27, 1975, denying the motion to dismiss of Milagros de la Cruz is set aside. The writ of prohibition is granted. No costs.

SO ORDERED.

Barredo (Actg. Chairman), Antonio, Concepcion Jr., and *Martin, JJ.*, concur.

Fernando, J., is on leave.

Martin, J., was designated to sit in the Second Division.

SECOND DIVISION

[G.R. No. L-41313. November 6, 1975]

ALIPIO MONDIGUING and ANDRES DUNUAN, *petitioners, vs.* **HON. FRANCISCO MEN ABAD, as Judge of the Court of First Instance of Ifugao; PEOPLE OF THE PHILIPPINES; MARIANO PACTIW, alias Bugbug; DULMOG ABLUYEN and ANGELINA ABLUYEN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; VENUE; GROUNDS FOR TRANSFER OF.** — A change of the place of trial in criminal cases should not be granted for whimsical or flimsy reasons. The interests of the public require that, to secure the best results and effects in the punishment of crime, it is necessary to prosecute and punish the criminal in the very place as near as may be, where he committed his crime. A change of venue may be ordered by the Supreme Court where it is shown that the