Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

[G.R. No. 80116. June 30, 1989.]

IMELDA MANALAYSAY PILAPIL, *Petitioner*, v. HON. CORONA IBAY-SOMERA, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch XXVI; HON. LUIS C. VICTOR, in his capacity as the City Fiscal of Manila; and ERICH EKKEHARD GEILING, *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; ADULTERY AND CONCUBINAGE; SWORN WRITTEN COMPLAINT OF OFFENDED SPOUSE, JURISDICTIONAL. — Under Article 344 of the Revised Penal Code, the crime of adultery, as well as four other crimes against chastity, cannot be prosecuted except upon a sworn written complaint filed by the offended spouse. It has long since been established, with unwavering consistency, that compliance with this rule is a jurisdictional, and not merely a formal, requirement. While in point of strict law the jurisdiction of the court over the offense is vested in it by the Judiciary Law, the requirement for a sworn written complaint is just as jurisdictional a mandate since it is that complaint which starts the prosecutory proceeding and without which the court cannot exercise its jurisdiction to try the case.

2. ID.; ID.; ID.; EXCLUSIVE AND SUCCESSIVE RULE IN THE PROSECUTION OF SEDUCTION, ABDUCTION, RAPE AND ACTS OF LASCIVIOUSNESS, NOT APPLICABLE TO CONCUBINAGE AND ADULTERY. — Now, the law specifically provides that in prosecutions for adultery and concubinage the person who can legally file the complaint should be the offended spouse, and nobody else. Unlike the offenses of seduction, abduction, rape and acts of lasciviousness, no provision is made for the prosecution of the crimes of adultery and concubinage by the parents, grandparents or guardian of the offended party. The so-called exclusive and successive rule in the prosecution of the first four offenses above mentioned do not apply to adultery and concubinage. It is significant that while the State, as parens partriae, was added and vested by the 1985 Rules of Criminal Procedure with the power to initiate the criminal action for a deceased or incapacitated victim in the aforesaid offenses of seduction, abduction, rape and acts of lasciviousness, in default of her parents, grandparents or guardian, such amendment did not include the crimes of adultery and concubinage. In other words, only the offended spouse, and no other, is authorized by law to initiate the action therefor.

3. ID.; ID.; ID.; LEGAL CAPACITY TO SUE IN CIVIL CASES, DETERMINED AS OF THE FILING OF THE COMPLAINT, APPLIED TO PROSECUTION OF CRIMINAL CASES. — Corollary to such exclusive grant of power to the offended spouse to institute the action, it necessarily follows that such initiator must have the status, capacity or legal representation to do so at the time of the filing of the criminal action. This is a familiar and express rule in civil actions; in fact, lack of legal capacity to sue, as a ground for a motion to dismiss in civil cases, is determined as of the filing of the complaint or petition. The absence of an equivalent explicit rule in the prosecution of criminal cases does not mean that the same requirement and rationale would not apply. Understandably, it may not have been found necessary since criminal actions are generally and fundamentally commenced by the State, through the People of the Philippines, the offended party being merely the complaining witness therein. However, in the so-called "private crimes", or those which cannot be prosecuted de oficio, and the present prosecution for adultery is of such genre, the

offended spouse assumes a more predominant role since the right to commence the action, or to refrain therefrom, is a matter exclusively within his power and option.

4. ID.; ID.; ID.; ID.; RATIONALE. — This policy was adopted out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial. Hence, as cogently argued by petitioner, Article 344 of the Revised Penal Code thus presupposes that the marital relationship is still subsisting at the time of the institution of the criminal action for adultery. This is a logical consequence since the raison d'etre of said provision of law would be absent where the supposed offended party had ceased to be the spouse of the alleged offender at the time of the filing of the criminal case.

5. ID.; ID.; ID.; ADULTERY AND CONCUBINAGE; AFTER A DIVORCE HAS BEEN DECREED, THE INNOCENT SPOUSE NO LONGER HAS THE RIGHT TO INSTITUTE PROCEEDINGS AGAINST THE OFFENDERS. — American jurisprudence, on cases involving statutes in that jurisdiction which are in pari materia with ours, yields the rule that after a divorce has been decreed, the innocent spouse no longer has the right to institute proceedings against the offenders where the statute provides that the innocent spouse shall have the exclusive right to institute a prosecution for adultery. Where, however, proceedings have been properly commenced, a divorce subsequently granted can have no legal effect on the prosecution of the criminal proceedings to a conclusion.

6. ID.; ID.; ID.; ID.; U.S. RULE APPLIED IN THIS JURISDICTION. — We see no reason why the same doctrinal rule should not apply in this case and in our jurisdiction, considering our statutory law and jural policy on the matter. We are convinced that in cases of such nature, the status of the complainant vis-a-vis the accused must be determined as of the time the complaint was filed. Thus, the person who initiates the adultery case must be an offended spouse, and by this is meant that he is still married to the accused spouse, at the time of the filing of the complaint.

7. CIVIL LAW; PERSONS AND FAMILY RELATIONS; MARRIAGE IN THE FEDERAL REPUBLIC OF GERMANY BETWEEN A FILIPINA AND A GERMAN, RECOGNIZED IN THE PHILIPPINES. — In the present case, the fact that private respondent obtained a valid divorce in his country, the Federal Republic of Germany, is admitted. Said divorce and its legal effects may be recognized in the Philippines insofar as private respondent is concerned in view of the nationality principle in our civil law on the matter of status of persons.

8. ID.; ID.; ID.; SEVERANCE OF MATERIAL BOND HAD THE EFFECT OF DISSOCIATING THE FORMER SPOUSES FROM EACH OTHER. — The allegation of private respondent that he could not have brought this case before the decree of divorce for lack of knowledge, even if true, is of no legal significance or consequence in this case. When said respondent initiated the divorce proceeding, he obviously knew that there would no longer be a family nor marriage vows to protect once a dissolution of the marriage is decreed. Neither would there be a danger of introducing spurious heirs into the family, which is said to be one of the reasons for the particular formulation of our law on adultery, since there would thenceforth be no spousal relationship to speak of. The severance of the marital bond had the effect of dissociating the former spouses from each other, hence the actuations of one would not affect or cast obloquy on the other.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; RULE IN MATA CASE (18 PHIL. 4 90), NOT APPLICABLE TO CASE AT BAR. — The aforecited case of United States v. Mata cannot be successfully relied upon by private *Respondent*. In applying Article 433 of the old Penal Code, substantially the same as Article 333 of the Revised Penal Code, which punished adultery "although the marriage be afterwards declared void", the Court merely stated that "the lawmakers intended to declare adulterous the infidelity of a married woman to her marital vows, even though it should be made to appear that she is entitled to have her marriage contract declared null and void, until and unless she actually secures a formal judicial declaration to that effect." Definitely, it cannot be logically inferred therefrom that the complaint can still be filed after the declaration of nullity because such declaration that the marriage is void ab initio is equivalent to stating that it never existed. There being no marriage from the beginning, any

complaint for adultery filed after said declaration of nullity would no longer have a leg to stand on. Moreover, what was consequently contemplated and within the purview of the decision in said case is the situation where the criminal action for adultery was filed before the termination of the marriage by a judicial declaration of its nullity ab initio. The same rule and requisite would necessarily apply where the termination of the marriage was effected, as in this case, by a valid foreign divorce.

D E C I S I O N

REGALADO, *J.*:

An ill-starred marriage of a Filipina and a foreigner which ended in a foreign absolute divorce, only to be followed by a criminal infidelity suit of the latter against the former, provides Us the opportunity to lay down a decisional rule on what hitherto appears to be an unresolved jurisdictional question.

On September 7, 1979, petitioner Imelda Manalaysay Pilapil, a Filipino citizen, and private respondent Erich Ekkehard Geiling, a German national, were married before the Registrar of Births, Marriages and Deaths at Friedensweiler in the Federal Republic of Germany. The marriage started auspiciously enough, and the couple lived together for some time in Malate, Manila where their only child, Isabella Pilapil Geiling, was born on April 20, 1980. 1

Thereafter, marital discord set in, with mutual recriminations between the spouses, followed by a separation de facto between them.

After about three and a half years of marriage, such connubial disharmony eventuated in private respondent initiating a divorce proceeding against petitioner in Germany before the Schoneberg Local Court in January, 1983. He claimed that there was failure of their marriage and that they had been living apart since April, 1982. 2

Petitioner, on the other hand, filed an action for legal separation, support and separation of property before the Regional Trial Court of Manila, Branch XXXII, on January 23, 1983 where the same is still pending as Civil Case No. 83-15866. 3

On January 15, 1986, Division 20 of the Schoneberg Local Court, Federal Republic of Germany, promulgated a decree of divorce on the ground of failure of marriage of the spouses. The custody of the child was granted to petitioner. The records show that under German law said court was locally and internationally competent for the divorce proceeding and that the dissolution of said marriage was legally founded on and authorized by the applicable law of that foreign jurisdiction. 4

On June 27, 1986, or more than five months after the issuance of the divorce decree, private respondent filed two complaints for adultery before the City Fiscal of Manila alleging that, while still married to said respondent, petitioner "had an affair with a certain William Chia as early as 1982 and with yet another man named Jesus Chua sometime in 1983." Assistant Fiscal Jacinto A. de los Reyes, Jr., after the corresponding investigation, recommended the dismissal of the cases on the ground of insufficiency of evidence. 5 However, upon review, the respondent city fiscal approved a resolution, dated January 8, 1986, directing the filing of two complaints for adultery against the petitioner. 6 The complaints were accordingly filed and were eventually raffled to two branches of the Regional Trial Court of Manila. The case entitled "People of the Philippines v. Imelda Pilapil and William Chia", docketed as Criminal Case No. 87-52435, was assigned to Branch XXVI presided by the respondent judge; while the other case, "People of the Philippines v. Imelda Pilapil and James Chua", docketed as Criminal Case No. 87-52434 went to the sala of Judge Leonardo Cruz, Branch XXV, of the same court. 7

On March 14, 1987, petitioner filed a petition with the Secretary of Justice asking that the aforesaid resolution of respondent fiscal be set aside and the cases against her be dismissed. 8 A similar petition was filed by James Chua, her co-accused in Criminal Case No. 87-52434. The Secretary of Justice, through the Chief State Prosecutor, gave due course to both petitions and directed the respondent city fiscal to inform the Department of Justice "if the accused have already been arraigned and if not yet arraigned, to move to defer further proceedings" and to elevate the entire records of both cases to his office for review. 9

Petitioner thereafter filed a motion in both criminal cases to defer her arraignment and to suspend further proceedings thereon. 10 As a consequence, Judge Leonardo Cruz suspended proceedings in Criminal Case No. 87-52434. On the other hand, respondent judge merely reset the date of the arraignment in Criminal Case No. 87-52435 to April 6, 1987. Before such scheduled date, petitioner moved for the cancellation of the arraignment and for the suspension of proceedings in said Criminal Case No. 87-52435 until after the resolution of the petition for review then pending before the Secretary of Justice. 11 A motion to quash was also filed in the same case on the ground of lack of jurisdiction, 12 which motion was denied by the respondent judge in an order dated September 8, 1987. The same order also directed the arraignment of both accused therein, that is, petitioner and William Chia. The latter entered a plea of not guilty while the petitioner refused to be arraigned. Such refusal of the petitioner being considered by respondent judge as direct contempt, she and her counsel were fined and the former was ordered detained until she submitted herself for arraignment. 13 Later, private respondent entered a plea of not guilty. 14

On October 27, 1987, petitioner filed this special civil action for *certiorari* and prohibition, with a prayer for a temporary restraining order, seeking the annulment of the order of the lower court denying her motion to quash. The petition is anchored on the main ground that the court is without jurisdiction "to try and decide the charge of adultery, which is a private offense that cannot be prosecuted de officio (sic), since the purported complainant, a foreigner, does not qualify as an offended spouse having obtained a final divorce decree under his national law prior to his filing the criminal complaint." 15

On October 21, 1987, this Court issued a temporary restraining order enjoining the respondents from implementing the aforesaid order of September 8, 1987 and from further proceeding with Criminal Case No. 87-52435. Subsequently, on March 23, 1988 Secretary of Justice Sedfrey A. Ordoñez acted on the aforesaid petitions for review and, upholding petitioner’s ratiocinations, issued a resolution directing the respondent city fiscal to move for the dismissal of the complaints against the petitioner. 16

We find this petition meritorious. The writs prayed for shall accordingly issue.

Under Article 344 of the Revised Penal Code, 17 the crime of adultery, as well as four other crimes against chastity, cannot be prosecuted except upon a sworn written complaint filed by the offended spouse. It has long since been established, with unwavering consistency, that compliance with this rule is a jurisdictional, and not merely a formal, requirement. 18 While in point of strict law the jurisdiction of the court over the offense is vested in it by the Judiciary Law, the requirement for a sworn written complaint is just as jurisdictional a mandate since it is that complaint which starts the prosecutory proceeding 19 and without which the court cannot exercise its jurisdiction to try the case.

Now, the law specifically provides that in prosecutions for adultery and concubinage the person who can legally file the complaint should be the offended spouse, and nobody else. Unlike the offenses of seduction, abduction, rape and acts of lasciviousness, no provision is made for the prosecution of the crimes of adultery and concubinage by the parents, grandparents or guardian of the offended party. The so-called exclusive and successive rule in the prosecution of the first four offenses above mentioned do not apply to adultery and concubinage. It is significant that while the State, as parens partriae, was added and vested by the 1985 Rules of Criminal Procedure with the power to initiate the criminal action for a deceased or incapacitated victim in the aforesaid offenses of seduction, abduction, rape and acts of lasciviousness, in default of her parents, grandparents or guardian, such amendment did not include the crimes of adultery and concubinage. In other words, only the offended spouse, and no other, is authorized by law to initiate the action therefor.

Corollary to such exclusive grant of power to the offended spouse to institute the action, it necessarily follows that such initiator must have the status, capacity or legal representation to do so at the time of the filing of the criminal action. This is a familiar and express rule in civil actions; in fact, lack of legal capacity to sue, as a ground for a motion to dismiss in civil cases, is determined as of the filing of the complaint or petition.

The absence of an equivalent explicit rule in the prosecution of criminal cases does not mean that the same requirement and rationale would not apply. Understandably, it may not have been found necessary since criminal actions are generally and fundamentally commenced by the State, through the People of the Philippines, the offended party being merely the complaining witness therein. However, in the so-called "private crimes", or those which cannot be prosecuted de oficio, and the present prosecution for adultery is of such genre, the offended spouse assumes a more predominant role since the right to commence the action, or to refrain therefrom, is a matter exclusively within his power and option.

This policy was adopted out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial. 20 Hence, as cogently argued by petitioner, Article 344 of the Revised Penal Code thus presupposes that the marital relationship is still subsisting at the time of the institution of the criminal action for adultery. This is a logical consequence since the raison d'etre of said provision of law would be absent where the supposed offended party had ceased to be the spouse of the alleged offender at the time of the filing of the criminal case. 21

In these cases, therefore, it is indispensable that the status and capacity of the complainant to commence the action be definitely established and, as already demonstrated, such status or capacity must indubitably exist as of the time he initiates the action. It would be absurd if his capacity to bring the action would be determined by his status before or subsequent to the commencement thereof, where such capacity or status existed prior to but ceased before, or was acquired subsequent to but did not exist at the time of, the institution of the case. We would thereby have the anomalous spectacle of a party bringing suit at the very time when he is without the legal capacity to do so.

To repeat, there does not appear to be any local precedential jurisprudence on the specific issue as to when precisely the status of a complainant as an offended spouse must exist where a criminal prosecution can be commenced only by one who in law can be categorized as possessed of such status. Stated differently and with reference to the present case, the inquiry would be whether it is necessary in the commencement of a criminal action for adultery that the marital bonds between the complainant and the accused be unsevered and existing at the time of the institution of the action by the former against the latter.

American jurisprudence, on cases involving statutes in that jurisdiction which are in pari materia with ours, yields the rule that after a divorce has been decreed, the innocent spouse no longer has the right to institute proceedings against the offenders where the statute provides that the innocent spouse shall have the exclusive right to institute a prosecution for adultery. Where, however, proceedings have been properly commenced, a divorce subsequently granted can have no legal effect on the prosecution of the criminal proceedings to a conclusion. 22

In the cited Loftus case, the Supreme Court of Iowa held that —

"'No prosecution for adultery can be commenced except on the complaint of the husband or wife.' Section 4932, Code. Though Loftus was husband of defendant when the offense is said to have been committed, he had ceased to be such when the prosecution was begun; and appellant insists that his status was not such as to entitle him to make the complaint. We have repeatedly said that the offense is against the unoffending spouse, as well as the state, in explaining the reason for this provision in the statute; and we are of the opinion that the unoffending spouse must be such when the prosecution is commenced." (*Emphasis supplied*.)

We see no reason why the same doctrinal rule should not apply in this case and in our jurisdiction, considering our statutory law and jural policy on the matter. We are convinced that in cases of such nature, the status of the complainant vis-a-vis the accused must be determined as of the time the complaint was filed. Thus, the person

who initiates the adultery case must be an offended spouse, and by this is meant that he is still married to the accused spouse, at the time of the filing of the complaint.

In the present case, the fact that private respondent obtained a valid divorce in his country, the Federal Republic of Germany, is admitted. Said divorce and its legal effects may be recognized in the Philippines insofar as private respondent is concerned 23 in view of the nationality principle in our civil law on the matter of status of persons.

Thus, in the recent case of Van Dorn v. Romillo, Jr., Et Al., 24 after a divorce was granted by a United States court between Alice Van Dorn, a Filipina, and her American husband, the latter filed a civil case in a trial court here alleging that her business concern was conjugal property and praying that she be ordered to render an accounting and that the plaintiff be granted the right to manage the business. Rejecting his pretensions, this Court perspicuously demonstrated the error of such stance, thus:

"There can be no question as to the validity of that Nevada divorce in any of the States of the United States. The decree is binding on private respondent as an American citizen. For instance, private respondent cannot sue petitioner, as her husband, in any State of the Union . . .

"It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law . . .

"Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets . . ."25

Under the same considerations and rationale, private respondent, being no longer the husband of petitioner, had no legal standing to commence the adultery case under the imposture that he was the offended spouse at the time he filed suit.

The allegation of private respondent that he could not have brought this case before the decree of divorce for lack of knowledge, even if true, is of no legal significance or consequence in this case. When said respondent initiated the divorce proceeding, he obviously knew that there would no longer be a family nor marriage vows to protect once a dissolution of the marriage is decreed. Neither would there be a danger of introducing spurious heirs into the family, which is said to be one of the reasons for the particular formulation of our law on adultery, 26 since there would thenceforth be no spousal relationship to speak of. The severance of the marital bond had the effect of dissociating the former spouses from each other, hence the actuations of one would not affect or cast obloquy on the other.

The aforecited case of United States v. Mata cannot be successfully relied upon by private *Respondent*. In applying Article 433 of the old Penal Code, substantially the same as Article 333 of the Revised Penal Code, which punished adultery "although the marriage be afterwards declared void", the Court merely stated that "the lawmakers intended to declare adulterous the infidelity of a married woman to her marital vows, even though it should be made to appear that she is entitled to have her marriage contract declared null and void, until and unless she actually secures a formal judicial declaration to that effect." Definitely, it cannot be logically inferred therefrom that the complaint can still be filed after the declaration of nullity because such declaration that the marriage is void ab initio is equivalent to stating that it never existed. There being no marriage from the beginning, any complaint for adultery filed after said declaration of nullity would no longer have a leg to stand on. Moreover, what was consequently contemplated and within the purview of the decision in said case is the situation where the criminal action for adultery was filed before the termination of the marriage by a judicial declaration of its nullity ab initio. The same rule and requisite would necessarily apply where the termination of the marriage was effected, as in this case, by a valid foreign divorce.

Private respondent's invocation of Donio-Teves, Et. Al. v. Vamenta, herein before cited, 27 must suffer the same

fate of inapplicability. A cursory reading of said case reveals that the offended spouse therein had duly and seasonably filed a complaint for adultery, although an issue was raised as to its sufficiency but which was resolved in favor of the complainant. Said case did not involve a factual situation akin to the one at bar or any issue determinative of the controversy herein.

WHEREFORE, the questioned order denying petitioner's motion to quash is SET ASIDE and another one entered DISMISSING the complaint in Criminal Case No. 87-52435 for lack of jurisdiction. The temporary restraining order issued in this case on October 21, 1987 is hereby made permanent.

SO ORDERED.

Melencio-Herrera, Padilla and Sarmiento, *JJ.*, concur.

Separate Opinions

PARAS, *J.*, concurring:

It is my considered opinion that regardless of whether We consider the German absolute divorce as valid also in the Philippines, the fact is that the husband in the instant case, by the very act of his obtaining an absolute divorce in Germany can no longer be considered as the offended party in case his former wife actually has carnal knowledge with another, because in divorcing her, he already implicitly authorized the woman to have sexual relations with others. A contrary ruling would be less than fair for a man, who is free to have sex will be allowed to deprive the woman of the same privilege.

In the case of Recto v. Harden (100 Phil. 427 [1956]), the Supreme Court considered the absolute divorce between the American husband and his American wife as valid and binding in the Philippines on the theory that their status and capacity are governed by their National law, namely, American law. There is no decision yet of the Supreme Court regarding the validity of such a divorce if one of the parties, say an American, is married to a Filipino wife, for then two (2) different nationalities would be involved.

In the book of Senate President Jovito Salonga entitled Private International Law and precisely because of the National law doctrine, he considers the absolute divorce as valid insofar as the American husband is concerned but void insofar as the Filipino wife is involved. This results in what he calls a "socially grotesque situation," where a Filipino woman is still married to a man who is no longer her husband. It is the opinion however, of the undersigned that very likely the opposite expresses the correct view. While under the national law of the husband the absolute divorce will be valid, still one of the exceptions to the application of the proper foreign law (one of the exceptions to comity) is when the foreign law will work an injustice or injury to the people or residents of the forum. Consequently since to recognize the absolute divorce as valid on the part of the husband would be injurious or prejudicial to the Filipino wife whose marriage would be still valid under her national law, it would seem that under our law existing before the new Family Code (which took effect on August 3, 1988) the divorce should be considered void both with respect to the American husband and the Filipino wife.

The recent case of Van Dorn v. Romillo, Jr.(139 SCRA [1985]) cannot apply despite the fact that the husband was an American with a Filipino wife because in said case the validity of the divorce insofar as the Filipino wife is concerned was NEVER put in issue.

Endnotes:

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1. Rollo, 5, 29.

2. Ibid., 6, 29.

3. Ibid., 7.

4. Ibid., 7, 29-30; Annexes A and A-1, Petition.

5. Ibid., 7, 178.

6. Ibid., 8; Annexes B, B-1 and B-2, id.

7. Ibid., 8-9, 178.

8. Ibid., 9, 178; Annex C, id.

9. Ibid., 9-10, 178; Annex D, id.

10. Ibid., 9; Annexes E and E-1, id.

11. Ibid., 10; Annex F, id.

12. Ibid., 9, 179; Annex G, id.

13. Ibid., 10; Annex H, id.

14. Ibid., 105.

15. Ibid., 11.

16. Ibid., 311-313.

17. Cf. Sec. 5, Rule 110, Rules of Court.

18. People v. Mandia, 60 Phil. 372, 375 (1934); People v. Zurbano, 37 SCRA 565, 569 (1971); People v. Lingayen, G.R. No. 64556, June 10, 1988.

19. Valdepeñas v. People, 16 SCRA 871 (1966); People v. Babasa, 97 SCRA 672 (1980).

20. Samilin v. Court of First Instance of Pangasinan, 57 Phil. 298 (1932); Donio-Teves, Et. Al. v. Vamenta, Et Al., 133 SCRA 616 (1984).

21. Rollo, 289.

22. 2 Am. Jur. 2d., 973 citing State v. Loftus, 104 NW 906, 907; Re Smith, 2 Okla. 153, 37 p. 1099; State v. Russell, 90 Iowa 569, 58 NW 915.

23. Recto v. Harden, 100 Phil. 427 (1956).

24. 139 SCRA 139, 140 (1985).

25. The said pronouncements foreshadowed and are adopted in the Family Code of the Philippines (Executive Order No. 209, as amended by Executive Order No. 227, effective on August 3, 1988), Article 26 whereof provides that" (w)here marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law."

26. U.S. v. Mata, 18 Phil. 490 (1911).

27. Footnote 20, ante.