

5 Phil. 325

[G.R.No. 2125. November 18, 1905]

PEDRO IBANEZ, PLAINTIFF AND APPELLEE, VS. ANA ORTIZ, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

On the 5th day of October, 1903, Pedro Ibanez, through his attorney, Joaquin Hernandez, filed a complaint against his wife, Ana Ortiz, asking that judgment be entered decreeing a divorce between the parties, with costs against the defendant, and praying for such other and further relief as the court deemed just and proper. The plaintiff alleged that the defendant, after the filing of the original complaint, had falsely and maliciously stated that her husband had ill-treated her and compelled her to take certain medicine for the purpose of effecting an abortion which took place when she was three months' pregnant, thereby falsely and calumniously charging him with the commission of a crime and exposing him to public hatred and contempt; that he had been informed that his wife, Ana Ortiz, had committed adultery with an unknown person in the municipality of Mabolo, Cebu, during the months of May, June, July, August, and September, 1903, having committed several other acts of adultery before and after the filing of the original complaint without his knowledge and consent; that plaintiff had not lived with his wife, the defendant in this case, since the latter part of December, 1902, when he learned, through public rumors, of his wife's adultery.

On the 26th of January, 1904, the plaintiff, with the consent of the court, filed an amendment to paragraphs 3, 4, and 5 of the complaint alleging that his wife, the defendant, Ana Ortiz, had had illicit

intercourse, and had, in the house of Julian Nacar and at other places within the municipality of Mabolo or Talamban of the said island, during the months of May, June, July, August, and September, 1903, committed adultery with one Primitivo Maligac, a clerk of the Compañia General de Tabacos, at Cebu, and that all such acts of adultery were committed by the defendant since she had in the latter part of December, 1902, left his house without his knowledge or consent.

The defendant presented a motion, which she subsequently amended, asking that plaintiff be required to make the allegations in paragraphs 3 and 4 of the supplementary complaint more definite and certain by showing the circumstances under which the alleged acts of adultery were committed, giving a better description of the man and the house and place where such acts were committed, and when the other alleged acts were committed, the allegations being so vague and unintelligible that no adequate defense could be made.

The court, after hearing the evidence, entered judgment March 3, 1904, against the defendant, Ana Ortiz, declaring that she had lost all her interest in the conjugal property and that she was not entitled to support, with costs, from which judgment the defendant appealed.

This action involves, as appears from the pleadings, a petition for divorce on the ground of adultery.

Assuming that the Court of First Instance had jurisdiction to try this case under the laws of titles 2, 9, and 10 of the Fourth *Partida* and section 56 of Act No. 136 of the Philippine Commission and other legal provisions cited in the decision of this court in a similar case, No. 1056, *Benedicto vs. De la Rama*,^[1] we shall inquire into the question as to whether the judgment appealed from can be sustained.

The provisions of Titles IV and XII, Book I of the Civil Code, were suspended in these Islands by a decree of the governor-general of the 29th of December, 1889, pursuant to telegraphic instructions from Madrid. That decree was published in the Official Gazette on the 31st of the same month and year—that is to say, twenty-four days after the

code had been in operation. Articles 42 to 107 of the said code are not, therefore, in force at present, and they can not be applied to cases which they might otherwise cover. The *Partidas* are the only laws governing the case at bar. (Decision in case No. 1056, *Benedicto vs. De la Rama*, already cited.)

It was proved at the trial that Ana Ortiz was married to Pedro Ibanez June 15, 1902; that six months later she left their residence in Cebu and went to live with her mother; that she thereafter removed to the house of one Julian Nacar, who had been her husband's cook at Mabolo, a neighboring town; that some time after that she entered into illicit relations with one Primitivo Maligac, those relations continuing until September, 1903.

Maligac frequently visited the house where the defendant was stopping, spending the night in defendant's room and not leaving until the following morning. The two were seen alone talking in a low voice and were found together at various places and in different houses late at night. The defendant was also seen walking unreservedly with Maligac notwithstanding the fact that she was a married woman.

While Ana Ortiz lived apart from her husband, and in the house of Julian Nacar, her paramour, Primitivo Maligac, delivered at various times to one Felix Son and his wife clothes belonging to Ana Ortiz for washing. On one occasion Maligac not being able to pay for the washing of 65 pieces of clothing, gave to the laundryman as security a ring which he then had on one of his fingers and told the latter not to say anything about the clothing belonging to Ana Ortiz, who received them after they were washed.

The foregoing facts are corroborated by Exhibit B, which is a letter written by Primitivo Maligac to the defendant, and the latter's answer thereto, and also by Exhibit A, wherein Ana Ortiz acknowledges the receipt of certain jewelry, belonging to her, from Marcelino Solon, to whom they were given by Maligac to secure a debt of 25 pesos, Mexican currency, which he borrowed in order to attend to "our needs," as stated in the same document. The plaintiff identified the defendant's handwriting and the other witnesses identified, as Maligac's, the

handwriting in the letter and answer referred to. Marcelino Solon testified as to the pledging of the jewels and the execution of the document in question before the municipal president of Mabolo.

It appears, therefore, fully proven that the defendant committed adultery by living at various times, for a period of six months, with Primitivo Maligac, who was not her husband, and that the cause of action upon which the complaint is based existed at the commencement of this suit and still exists.

The proof introduced by the plaintiff was not overcome by that of the defense. Indeed, the trial court, after a careful examination of the evidence for the defense, rejected the same, stating that it was false and could not be believed in the face of the positive proof introduced by the plaintiff.

Marriage even considered as a contract is of great interest to the community at large. The parties thereto can not be divorced by mutual consent. A judicial decree is necessary to accomplish this. The decree, however, does not dissolve the bonds between the contracting parties. , It merely separates them temporarily or permanently, as the case may be. This suspension produces some other legal effects provided for by law. (Laws 3 and 7, title 2; law 13, title 9, and laws 1 and 2, title 10, *partida* 4.)

Adultery being recognized by the *Partidas* as a ground for divorce, and it having been shown that the defendant committed adultery to the prejudice of the plaintiff, the decree of divorce prayed for in the complaint should be granted. Such decree, however, will not have the effect of dissolving the marriage. Its only effect can be the separation of the parties with all the legal consequences pertaining thereto, in accordance with the prayer of the complaint. (Arts. 1417, 1433, and 1434 of the Civil Code.)

Although, as has already been said, the *Partidas* are the only laws which conferred upon the court below the power to take cognizance of and determine this action for divorce, the provisions of

the Civil Code contained in those articles which were not suspended by the said telegraphic order, and which are still in force, are also applicable as to the effects of a final decree of divorce.

In view of the provisions contained in said articles and others of the Civil Code, we are of the opinion that the judgment of the court below should be affirmed only in so far as it decrees a divorce between the parties in the manner stated.

It is not contended that the defendant has lost her interest in the conjugal property and her right to support, and no question is raised as to whether, as a result of the decree of divorce, the defendant should lose these rights. The judgment of the court below in this respect is reversed.

For the foregoing reasons the petition for divorce is to say, the separation of the plaintiff and the defendant is hereby granted with all the usual legal effects. The parties shall not be obliged to live together. The costs will be borne by the defendant. The judgment thus modified is affirmed. After the expiration of twenty days let judgment be entered and let the case be remanded to the court below for action in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Willard, JJ., concur.

^[1] 3 Phil. Rep., 34 (204 U.S., 303.)
