

HIPOLITA ALMACEN, PLAINTIFF AND APPELLEE, VS. TEODORO N. BALTAZAR, DEFENDANT AND APPELLANT.

G.R. No. L- 10028. May 23, 1958

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

This is an appeal from a decision rendered by the Court of First Instance of Manila ordering the defendant-appellant to pay plaintiff-appellee a monthly support of P50.00 beginning with the month of August, 1955. Despite the meagre amount involved in the case, it was brought to this Court on appeal because the appellant only raised questions of law.

The facts of the case as found by the lower court are as follows: that plaintiff and defendant were legally married on March 24, 1923; that in 1937, plaintiff committed adultery with one named Jose Navarro, a cousin of defendant; that prior to the infidelity of the wife, the defendant himself has not been loyal to her, he having been once confined at the hospital suffering from venereal disease; that the defendant separated from the plaintiff after the latter's infidelity and while estranged from her he lived maritally with another woman by the name of Lourdes Alvarez; that after their separation there has been a reconciliation between them or at least a condonation by defendant of the acts committed by the wife as shown by the fact that he has been sending her money for her support; that husband and wife were in *pari delicto* and, therefore, defendant is bound to support the plaintiff because he has likewise been unfaithful to her.

Appellant contends that the lower court erred:

- in not taking plaintiff's adulterous act of infidelity as defense against her claim for support and in not exempting him from the obligation to give such support; and
- in finding that the evidence on record was sufficient to establish a condonation of plaintiff's adulterous act and reconciliation between plaintiff and defendant.

As to the first assignment of error, we find that by the provisions of Art. 303 of the new Civil Code, the obligation to support shall cease "when the recipient has committed some act which gives rise to disinheritance;" that under Art. 921 (k) of the same Code, a spouse may be disinherited when she has given cause for legal separation," and under Art. 97, one of the causes for legal separation is "adultery on the part of the wife and concubinage on the part of the husband", as defined in the Penal Code. Accordingly, if the plaintiff was the only one who committed adultery which is a good cause for disinheritance and legal separation, defendant's theory would seem to be correct; but, in the present case, we agree with the lower court's ruling that defendant is still bound to support his wife, firstly, because plaintiff and defendant were both guilty of infidelity and before the filing of the action they had a reconciliation or, at least, defendant had pardoned plaintiff's unfaithfulness, for which reason we may apply Art. 922 of the aforesaid Code which provides that "a subsequent reconciliation between the offender and the offended person deprives the latter of the right to disinherit, and renders ineffectual any disinheritance that may have been made;" secondly, the law on support (Title IX, Book I, Arts. 290-304, Civil Code) contains no

provision squarely applicable to the present case in which both parties had committed infidelity, neither is there any provision to the effect that when both spouses committed marital offenses against one another, one can no longer ask support from the other; thirdly, there is the general principle that when two persons acted in bad faith, they should be considered as having acted in good faith, which principle may be applied to the instant case to the effect that plaintiff and defendant being in *pari delicto*, the latter cannot claim the adultery of the former as defense to evade the obligation to give her support.

As to the second assignment of error, we find it also groundless, for the lower court declared that there has been a condonation by the defendant of the acts committed by the wife because of the latter's testimony and documentary evidence submitted (Exhibits A, B, C, F and J), which show that the defendant had given money to the plaintiff on several occasions through third persons and, in our opinion, such evidence is really sufficient to show condonation or reconciliation between plaintiff and defendant, for had there been no condonation of plaintiff's infidelity and no reconciliation between her and defendant, the latter would not certainly have given any amount of money for her support.

Defendant argues, however, that he and plaintiff never resumed their conjugal relationship and, therefore, there has been no legal condonation of the acts of the erring wife; but it cannot be disputed that the act of giving money to an erring wife and the fact proven in the case that no action was taken against her before the courts of justice are sufficient to establish forgiveness amounting to condonation, for "condonation is the forgiveness of one of the married parties of an offense which he knows the other has committed against the other." (Words & Phrases 8A, pp. 19-20} At any rate, pardon or condonation does not require sexual intercourse and it may be express or implied.

Wherefore, finding no errors in the decision appealed from, the same is hereby affirmed with costs against the defendant.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Felix, JJ., concur.

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