

**JOSE MANUEL LEZAMA AND PAQUITA LEZAMA, PETITIONERS, VS.
HON. JESUS RODRIGUEZ, JUDGE OF THE COURT OF FIRST INSTANCE
OF ILOILO, JOSE DINEROS, IN HIS CAPACITY AS RECEIVER OF THE
LA...**

G.R. No. L-25643. June 27, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

The issue tendered for resolution in this case is whether a wife, who is a co-defendant of her husband in an action, may be examined as a hostile witness by the adverse party under section 6 of Rule 132 of the Rules of Court, without infringing on her marital privilege not to testify against her husband under section 20(b) of Rule 130. The trial court, presided by the respondent Judge Jesus Rodriguez, ruled in the affirmative and required the wife to appear and testify. The petitioners sued for certiorari but the Court of Appeals dismissed their petition[1] and denied their motion for reconsideration.[2] Hence this appeal.[3]

On July 18, 1960 Jose S. Dineros, acting as receiver of the La Paz Ice Plant & Cold Storage Co. in Iloilo, together with C.N. Hodges and Ricardo Gurrea, filed an action in the Court of First Instance of Iloilo for the annulment of a judgment rendered against the La Paz Ice Plant by the Court of First Instance of Manila in Civil Case 39327. Named as defendants were Mariano C. Roque, in whose favor judgment was rendered, and the spouses Jose Manuel and Paquita Lezama. The complaint alleged that, because of mismanagement by the Lezamas, the La Paz Ice Plant was placed under the receivership of Dineros; that during the pendency of the receivership, Marciano C. Roque brought an action against the La Paz Ice Plant in the Court of First Instance of Manila for the collection of P150,000, which sum he had supposedly lent to it; that summons was served not on the receiver but on the spouses Jose Manuel and Paquita Lezama; and that, through the collusion of the Lezamas, Roque was able to obtain judgment by default against the company. It was claimed that, because the summons was served on Jose Manuel Lezama instead of on the receiver, the Court of First Instance of Manila acquired no jurisdiction over the La Paz Ice Plant and that, therefore, the decision of that court was void.

In their answer, the defendant spouses (the herein petitioners), while admitting that the company was placed under receiver-ship, maintained that Jose Manuel Lezama nevertheless remained president of the La Paz Ice Plant and that as such he had authority to receive in behalf of the company the court summons in Civil Case 39827. They denied entering into collusion with Roque and averred that they did not contest Roque's claim because they knew it to be a legitimate obligation which the La Paz ice Plant had incurred pursuant to a resolution of its board of directors.

Issues having been joined, the case was thereupon heard. At the hearing Dineros asked the court to issue a subpoena to Pa-quita Lezama to testify as "a witness summoned by the plaintiffs in accordance with the Rules of Court." The request was granted over the objection of the petitioners who invoked the following provision of the Rules of Court:

"A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other." [4]

This provision deals with two different matters which rest on different grounds of policy: the disqualification of husband and wife to testify in each other's behalf, as well as their privilege not to testify against each other. [5] The fundamental theory of the common law is said to be that relationship of the spouses, not their pecuniary interest, is the basis of the disqualification. [6] Indeed Section 20 of Rule 130 is entitled "Disqualification by reason of . . . relationship."

On the other hand, while a welter of emotional reasons has been offered [7] for the privilege, the "true explanation [which] is after all the simplest" [8] and which constitutes "the real and sole strength of the opposition to abolishing the privilege," is the natural repugnance in every fair-minded person to compelling a wife or husband to be the means of the other's condemnation and to subjecting the culprit to the humiliation of being condemned by the words of his intimate life partner. [9]

Here the request for subpoena indicated that Paquita Lezama was to do no more than testify as an adverse party in the case and, indeed, in the light of the allegations both in the complaint and in the answer, the request was apparently one that could reasonably be expected to be made. Thus, the complaint charged:

"13. - That in obtaining the judgment by default in Civil Case No. 39827 of the Court of First Instance of Manila against the La Paz Ice Plant & Cold Storage Co., Inc. defendants, in gross and evident bad faith, and, in fraudulent conspiracy, made it appear that the La Paz Ice Plant & Cold Storage Co., Inc. had obtained a loan of P150,000.00 from defendant Marciano C. Roque thru defendant Jose Manuel Lezama allegedly upon an authority vested upon defendant Jose Manuel Lezama by the alleged Board of Directors of the La Paz Ice Plant & Cold Storage Co., Inc. allegedly evidenced by the minutes of the meetings of the Board of Directors of the said corporation signed by defendant Jose Manuel Lezama and attested to by Benjamin Luis Borja and Paquita B. Lezama and that defendants spouses Jose Manuel Lezama and Paquita B. Lezama had manipulated the books of the corporation by making it appear that such fictitious loan was then in existence."

On the other hand, the answer claimed

"13. That the herein defendants specifically deny all the allegations contained in paragraph 13 of the complaint; the truth is, that the herein defendants have not conspired and acted in bad faith with the plaintiff [Marciano C. Roque] in Civil Case No. 39827 of the Court of First Instance of Manila for the rendition of the said judgment referred to therein; for the truth is, that the herein defendants, in their capacities as President-Manager and Secretary of the La Paz Ice Plant & Cold Storage Co., Inc., believing as they believe that the obligation sought to be enforced by said civil action being legitimate and the allegations of the complaint in said Civil Case No. 39827 of the Court of First Instance of Manila are true, they did not deem it wise to contest the same; that the obligation of P150,000.00 of the La Paz Ice Plant & Cold Storage Co., Inc., which the defendant Marciano C. Roque sought to be enforced in Civil Case No. 39827 of the Court of First Instance of Manila was legitimately contracted in accordance with law; that said obligation was duly entered in the books of the corporation and that the said loan is not fictitious; that the amount realized therefrom was spent for the benefit of the said corporation."

Thus, while the petitioners denied the charge that the loan was fictitious, they did not deny the allegation that it was Paquita Lezama who, as secretary of the company, signed the minutes of the meeting at which Jose Manuel Lezama was allegedly authorized to negotiate the loan and that it was she who, likewise as secretary, made the entry in the books of the corporation.

It was obviously to test the truth of the assertion that the loan transaction was above board that Dineros, the

company receiver, wanted Paquita Lezama on the witness stand, not as a spouse witness "for or against her husband," but rather as an adverse party in the case.

It is postulated that a party can make, as it were, such forays into his opponent's position on the strength of section 6 of Rule 132 which provides:

"Direct examination of unwilling or hostile witnesses. - A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject-matter of his examination in chief."

The basic issue may therefore be restated thus: In this case where the wife is a co-defendant in a suit charging fraud against the spouses, can the wife be compelled to testify as an adverse party witness concerning her participation in the alleged fraud without violating Section 20(b) of Rule 130?

It is argued that the wife may be so compelled but her testimony would be receivable only against her.[10] It is even suggested that "each may testify in his or her own behalf, although the testimony may inure to the benefit of the other spouse, or against his or her own interest, although the testimony may also militate against the other spouse." [11] Upon the other hand, it is insisted that compelling Paquita Lezama to testify will transgress Section 20(b) of Rule 130, especially if her testimony will support the plaintiff's charge.

The complaint charges "fraudulent conspiracy" on the part of the spouses and one Marciano C. Roque to make it appear that the La Paz Ice Plant & Cold Storage Co., Inc. was indebted to Roque. The wife, Paquita Lezama, is called upon to testify as an adverse party witness on the basis of her following participation in the alleged fraudulent scheme: "that it was Paquita Lezama who as Secretary of the company signed the minutes of the meeting during which Manuel Lezama was allegedly authorized to negotiate the loan and that it was she who, likewise as Secretary, made the entry in the books of the corporation."

Evidently, Paquita Lezama will be asked to testify on what actually transpired during the meeting and will be asked questions on the matter of the veracity or falsity of the entry in the books of the corporation. Whether her testimony will turn out to be adverse or beneficial to her own interest, the inevitable result would be to pit her against her husband. The interests of husband and wife in this case are necessarily interrelated. Testimony adverse to the wife's own interests would tend to show the existence of collusive fraud between the spouses and would then work havoc upon their common defense that the loan was not fictitious. There is the possibility, too, that the wife, in order to soften her own guilt, if guilty she is, may unwittingly testify in a manner entirely disparaging to the interests of the husband.

Because of the unexpansive wording of the rule which provides merely that the wife cannot be examined "for or against her husband without his consent," it is further argued that "when husband and wife are parties to an action, there is no reason why either may not be examined as a witness for or against himself or herself alone," and his or her testimony could operate only against himself or herself.[12]

Even if such view were generally acceptable as an exception to the rule, or even as a separate doctrine, it would be inapplicable in this case where the main charge is collusive fraud between the spouses and a third person, and the evident purpose of examination of the wife is to prove that charge.

Indeed, in those jurisdictions which allow one spouse to be subjected to examination by the adverse party as a hostile witness when both spouses are parties to the action, either the interests of the spouses are separate or

separable, or the spouse offered as a witness is merely a formal or nominal party.[13]

The final point urged upon us is that to prevent one spouse from testifying would encourage alliance of husband and wife as an instrument of fraud; for then what better way would there be to prevent discovery than to make a co-conspirator in fraud immune, to the most convenient mode of discovery available to the opposite party? This argument overlooks the fact that Section 6 of Rule 132 is a mere concession, for the sake of discovery, from the rule which precludes the husband or the wife from becoming the means of the other's condemnation. The said rule of discovery should therefore not be expanded in meaning or scope as to allow examination of one's spouse in a situation where this natural repugnance obtains.

It may not be amiss to state in passing that the respondent Dineros has not demonstrated that there is no evidence available to him other than the Lezama's testimony to prove the charge recited in the complaint.

ACCORDINGLY, the resolutions appealed from are re-versed, and this case is ordered remanded to the court of origin for further proceedings in accordance with law. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Sanchez, Angeles, and Fernando, JJ., concur.
Makalintal and Zaldivar, JJ., took no part.

[1] Resolution 52, CA-G.R. 36718-R, Nov. 24, 1965.

[2] Resolution 12, CA-G.R. 36718-R, Jan. 6, 1966.

[3] While the appeal was pending in this Court, the receivership was dissolved and, consequently, Jose S. Dineros, who was originally made a party respondent, was dropped and the La Paz Ice Plant & Cold Storage Co. substituted in his stead. Resolution, Oct. 26, 1966.

[4] Rule 130, sec. 20(b).

[5] See 8 J. Wigmore, Evidence, sec. 2227 at 211, sec. 2223 at 216 (McNaughton rev. 1961) [hereafter cited as 3 Wigmore].

[6] J. Wigmore, Evidence, sec. 603 at 737 (3d ed. 1940) [hereafter cited as 2 Wigmore].

[7] For instance, in *United States v. Concepcion*, 31 Phil. 182 (1915) the basis of the rule is said to be the "considerations of public policy growing out of the marital relation." Said the Court: "To allow one to testify for or against the other would be to subject him or her to great temptation to commit perjury and to endanger the harmony and confidence of the marital relation." At 187. On the other hand, in *People v. Francisco*, 78 Phil. 694 (1947), the Court gave as reasons for the privilege the following: "First, identity of interest; second, the consequent danger of perjury; third, the policy of the law which deems it necessary to guard the security and confidences of private life even at the risk of an occasional failure of justice, and which rejects such evidence because its admission would lead to domestic disunion and unhappiness; and fourth, because, where a want of domestic tranquility exists, there is danger of punishing one spouse through the hostile testimony of the other." At 703.

[8] 8 Wigmore, sec. 2227 at 212.

[9] *Id.*, sec. 2228 at 217.

[10] See 8 Wigmore 227.

[11] 97 C.J.S. 477.

[12] See Menzel vs. Tubbs, et al., 53 NW 653, 656 cited in 58 Am. Jur. 129.

[13] 97 C.J.S. 477.

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