

CARINA O. AVENA, PETITIONER-APPELLEE, VS. EPHRAIM A. AVENA, RESPONDENT. VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This is an appeal by the Office of the Solicitor General from the Decision dated 15 December 2009[1] of the Regional Trial Court, Branch 17, Bulacan which declared the marriage between petitioner and respondent to be void ab initio on account of the latter's psychological incapacity.

The Antecedents

Petitioner Carina Osdaña Avena (Carina) and respondent Ephraim A. Avena (Ephraim) were married on 28 March 1982 in a ceremony officiated by Rev. Fr. Pablo Dimagiba, Parish Priest of San Jose del Monte, Bulacan. At the time of their marriage, Carina was 17 years old while Ephraim was 22 years of age.

Petitioner Carina testified that during the early stage of their relationship, respondent was overly jealous and possessive. He gets upset when she goes out with friends; he did not even want her to use make-up. Worse, when respondent gets jealous, he would inflict physical harm on her. Carina had thought of breaking up with respondent Ephraim, but she was deterred because of Ephraim's suicidal tendencies, as his two siblings have committed suicide on account of problems of the heart.

During their marriage, Carina and Ephraim lived with the latter's parents who supported them. Their relationship, however, never blossomed nor became enriched. Respondent refused to work and spent the whole day either sleeping or loitering around. This led to quarrels and squabbles that often resulted to violence.

In February 1983, Carina became pregnant, and considering her husband's irresponsibility, she sought financial assistance from her parents to embark on a livelihood. They moved out from the house of respondent's parents so that they can live independently. Sadly, however, despite Carina's efforts, respondent Ephraim continued with his laid back lifestyle and did not care to assist petitioner in attending to their hog raising business.

When Carina was about to give birth to their eldest child, respondent Ephraim insisted that Carina give birth at home, rather than in a hospital, because he considered it to be a waste of money. Carina finally gave birth on 05 October 1983 to a son who was named Erwin. Being now a parent, Carina had hoped that Ephraim would change for the better, but she was mistaken. Respondent remained irresponsible and spent his time loitering around and engaging in drinking sprees. Unable to bear the situation, Carina moved to her parent's house, but respondent pleaded for her to return. He threatened to kill himself if she refused; and Carina eventually decided to give their marriage a second chance and again lived with Ephraim. On 17 March 1988, the spouses begot their second child, a daughter whom they named Camille.

In 2001, Carina learned of Ephraim's marital infidelity. Whenever she confronted him about his illicit affairs, Ephraim would often inflict physical harm on Carina and their children. His irrational behavior even worsened; at

one time, he hog tied her and kept her inside a pigpen when she refused to give him money to spend for his paramour. In March 2002, Ephraim abandoned his family to live with his other woman.

On 10 May 2007, or some five (5) years after their separation, Carina filed the instant petition for judicial declaration of nullity of marriage under Article 36 of the Family Code[2] asserting that Ephraim was psychologically incapacitated to comply with the essential obligations of marriage. Ephraim did not file an Answer to the petition; neither did he submit himself to a psychological examination. After investigation, the trial prosecutor found that there was no collusion, and trial proceeded.

Psychologist Nedy Tayag testified in court and presented her psychological report.[3] It pertinently stated, viz:

X X X

“REMARKS:

Taken from a thorough analysis of all data gathered, it is the strong opinion of the undersigned that the marriage of petitioner and respondent failed to last due to respondent's psychological incapacity to assume and discharge his essential roles and obligations (sic) being a married man.

Respondent manifests the diagnostic features of a deficit classified as ANTISOCIAL PERSONALITY DISORDER. As seen, he acts in a way that disregards the feelings and rights of other people, most particularly his wife. He never really cared about her. He never provided for his family's needs as he was never employed. He only cared about his own needs such that he could not recognize that he is already neglecting his wife and children. He preferred to be out with his friends than spend time with his family. He failed to sense that she needs to be loved, caressed, and assured that they are real partners in life as they had vowed to be. Financially, materially, and emotionally, he failed to do his part as Carina's husband. As for being a father, the only thing he gave to his children was his surname. He never had a share in raising their kids, nor showed any interest to have a part in raising them. Not even a single cent was given for the children's needs. He only used his wife to advance his longing for an intimate partner, to have someone to satisfy his own needs. During the marriage, he engaged in an (sic) illicit affairs even if he is still rightfully and lawfully married to Carina. He used to come home any time he wished from a drinking spree. Moreover, he is very irritable and would haughtily assert his authority to make his wife shake with fear. He would hurt her whenever she tried to confront him. Moreover, he remained to be very dependent on others to provide for him. He doesn't care about the future and has totally abandoned his marital and parental obligations. In spite of all these, he fails to understand that his behavior is dysfunctional because his ability to feel guilty, remorseful, and emphatic is impaired.

Said disorder of the respondent has a root cause traceable from his shaping years, apparently raised from overbearing caregivers who treated him with exceptional attention. Ephraim is obviously a product of faulty rearing practices that he grew up misguided and very self-oriented. His parents are a spoiler and have raised their son more than is appropriate. They failed to teach Ephraim a sense of responsibility that he became dependent on her and could not get himself to look for means to support himself. Also, his mother was always there at his side that he became too reliant and confident that someone would provide for him and look after him even if he doesn't work. She tolerates wrongdoings in her own household and instead of correcting her children's mistakes, she would still rally behind them and cover up for their transgressions. Ephraim then failed to develop the ability to discern right from wrong. Such had been deeply engrained within his system that therapy is no longer possible.

The psychological incapacity of respondent is characterized by juridical antecedence, as it already existed long before they entered into marriage. Since it started early in life, it has been deeply engrained within his system and becomes an integral part of his personality structure, thereby rendering such to be permanent and incurable.

As such, spouses could never live together harmoniously as authentic husband and wife. The hope of

reconciliation along with a functional or normal marital union is viewed to be uncertain if not totally impossible. The essential obligations of love, respect, fidelity, mutual help and support, and commitment did not and will no longer exist between them.

With due consideration on the aforementioned findings, the undersigned recommends that the ties between them be severed and declared null and void.”

x x x

In due time, the court a quo rendered the assailed Decision dated 15 December 2009 where the decretal part reads:

x x x

“WHEREFORE, judgment is hereby rendered declaring the marriage between herein petitioner and respondent void ab initio, with all the legal effect thereof, pursuant to Article 50 of the Family Code of the Philippines.

Accordingly, the City Civil Registrar of San Jose del Monte Bulacan, and the Director of the National Census and Statistics Office, are hereby ordered to cancel from their respective books of marriage the marriage of petitioner and respondent that was solemnized on March 28, 1982 at the Municipality of San Jose del Monte, Bulacan.

In the event that no appeal is filed in this case, the Clerk of Court is directed to issue an Entry of Final Judgment, upon expiration of (sic)15-day reglementary period within which to appeal.

Petitioner is directed to submit certified true copies, each of the Decision and the Entry of Final Judgment, to the Local Civil Registrar of San Jose del Monte, Bulacan, where her marriage to the respondent is registered, the Local Civil Registrar of Malolos City, where this Family Court is situated (Sec. 19, A.M. No. 02-11-10-SC), and the National Census and Statistics Office, after which, the Court shall issue the Decree of Annulment of Marriage which should, likewise be registered in the said Offices.

Furthermore, the petitioner is directed to submit to the Court, his compliance herewith, within thirty (30) days from receipt of this Decision.

SO ORDERED.”

x x x

Oppositor moved for reconsideration, but the same was denied. Hence, the OSG brings this appeal before Us arguing that:

THE COURT A QUO ERRED IN FINDING RESPONDENT TO BE PSYCHOLOGICALLY INCAPACITATED TO PERFORM HIS ESSENTIAL MARITAL OBLIGATIONS.

The Court's Ruling

The appeal has merit.

Psychological incapacity as a ground for the declaration of nullity of marriage is provided in Article 36 of the Family Code of the Philippines, which provides:

x x x

“Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.”

x x x

This ground was particularly discussed in the case of *Leouel Santos vs. Court of Appeals, et al.*,^[4] where the Supreme Court declared that psychological incapacity must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. The defect should refer to “no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage.” It must be confined to “the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.”^[5] In the case of *Republic of the Philippines vs. Court of Appeals and Roridel Olaviano Molina*,^[6] the High Court incorporated the basic requirements established in *Santos*,^[7] and laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code. Thus,

x x x

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it “as the foundation of the nation.” It decrees marriage as legally “inviolable,” thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be “protected” by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological - not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychologically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *eiusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at “the time of the celebration” of the marriage. The evidence must show that the illness was existing when the parties exchanged their “I do’s.” The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x x

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, “mild characterological peculiarities, mood changes, occasional emotional outbursts” cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence

and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x x

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the defensor vinculi contemplated under Canon 1095.

x x x

In this case, it is observed that it was Carina who solely testified on the malevolent actuations and despicable character of her husband, without any corroborative affirmation from other credible witness.

Carina mentioned in general terms about Ephraim's habitual drunkenness, infidelity, refusal to seek employment, and the physical harm she received from him – all of which occurred after their marriage and not prior to or at the time of the celebration of the marriage - without specification of the details and circumstances of each and every incident. In other words, there appears to be an evidentiary gap that materially affected her cause, as the law and its related jurisprudence require that the psychological incapacity must exist at the time of the celebration of the marriage.[8]

It is noted that the relationship of Carina and Ephraim was an on and off situation. Though marred by sporadic skinwishes, they lived together as husband and wife since their marriage in 1982 until 2002.

Seemingly , the defect is not permanent or incurable, not natal or permanent.

Habitual drunkenness and refusal to find a job, by themselves, do not conclusively establish psychological incapacity. All these simply indicate difficulty, neglect or mere refusal to perform marital obligations that, as the cited jurisprudence holds, cannot be considered as constitutive of psychological incapacity in the absence of proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness.[9]

Moreover, while it may be conceded that infliction of physical violence on women may indicate abnormal behavioral or personality patterns, again We state that such deportment - standing alone - does not constitute psychological incapacity within the context of Article 36 aforementioned. Jurisprudence holds that there must be evidence showing a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.[10] Here, even assuming arguendo, that Carina's account of the physical beatings she received from respondent were factual, the evidence that was presented on this point does not satisfy the requirements of Article 36, specifically the Santos requisites.

Anent psychologist Nedy Tayag's testimony and her report, We hold that the same failed to conclusively establish the root cause, gravity and incurability of Ephraim's psychological condition. Not only is there insufficient factual foundation to make a definitive conclusion, the psychologist made generalizations on the question of the extent of Ephraim's personality disorder as grave and incurable, and on the effects of the disorder on respondent's awareness of and his capability to undertake the duties and responsibilities of marriage.[11] In Our perception, by merely using the meager and obviously biased information coming from an interested party, the psychologist could not have procured a complete personality profile and could not have conclusively formed a reasoned and objective opinion of Ephraim's psychological condition. While the report or evaluation may be

conclusive with respect to Carina's psychological condition, this is not true for respondent.[12]

On this point, the Philippine Constitution sets out a policy of protecting and strengthening marriage as the foundation of the family, and the family as the basic social institution. Marriage, regarded as an inviolable institution and enjoying protection from the State, cannot be dissolved at the whim of the parties. In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies with the plaintiff.[13] Unless the evidence presented clearly reveals a situation where the parties, or one of them, could not have validly entered into a marriage by reason of a grave and serious psychological illness existing at the time it was celebrated, which is not so in the instant case, We are compelled to uphold the indissolubility of the marital tie.[14]

WHEREFORE, premises considered, the appeal is granted. The Decision dated 15 December 2009[15] and the Resolution dated 14 June 2011[16] of the Regional Trial Court, Branch 17, Bulacan in Civil Case No. 277-M-2007 are reversed and set aside. The petition for the declaration of nullity of marriage of Carina O. Avena and Ephraim A. Avena is DISMISSED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Annex "A" 42 to 51, Rollo.

[2] Originally, Article 39 of the Family Code provided: "Art. 39, the action or defense for the declaration of absolute nullity of a marriage shall not prescribe. However, in the case of marriage celebrated before the effectivity of this Code and falling under Article 36, such action or defense shall prescribe in ten years after this Code shall have taken effect." However, Republic Act No. 8533 was eventually enacted and approved on February 23, 1998, which amended Article 39 to read as follows: "Aft. 39, The action or defense for the declaration of absolute nullity of a marriage shall not prescribe." as cited in Republic vs. Dagdag, G.R. No. 109975, February 9, 2001.

[3] Exhibit "D", pages 41 to 49, Records.

[4] G.R. No. 112019, January 4, 1995, 240 SCRA 20, 34.

[5] Padilla-Rumbaua vs. Rumbaua, G.R. No. 166738, August 14, 2009, 596 SCRA 157, 175.

[6] G.R. No. 108763, February 13, 1997, 268 SCRA 198, 209-213.

[7] Supra note 5.

[8] Jocelyn M. Suazo vs. Angelito Suazo, et. al., G.R. No. 164493, March 10, 2010.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Paz vs. Paz, G.R. No. 166579, February 18, 2010, 613 SCRA 195.

[14] Agraviador vs. Amparo Agraviador, G.R. No. 170729, December 8, 2010.

[15] Annex “A” pages 42 to 51, Rollo.

[16] Annex “B” pages 52 to 53, Rollo.

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