

BENJAMIN BUGAYONG, PLAINTIFF AND APPELLANT, VS. LEONILA GINEZ, DEFENDANT AND APPELLEE.*G.R. No. 10033. December 28, 1956*

Ponente: FELIX, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10033/>**FELIX, J.:**

This is a case for legal separation filed in the Court of First Instance of Pangasinan wherein on motion of the defendant, the case was dismissed. The order of dismissal was appealed to the Court of Appeals, but said Tribunal certified the case to this Court on the ground that there is absolutely no question of fact involved, the motion being predicated on the assumption as true of the very facts testified to by plaintiff-husband.

The facts of the case abridgedly stated are as follows: Benjamin Bugayong, a serviceman in the United States Navy, was married to defendant Leonila Ginez on August 27, 1949, at Asingan, Pangasinan, while on furlough leave. Immediately after their marriage, the couple lived with the sisters of the husband in said municipality, but before the latter left to report back to duty, he and his wife came to an agreement that Leonila would stay with his sisters who later moved to Sampaloc, Manila. After some time, or about July, 1951, Leonila Ginez left the dwelling of her sisters-in-law and informed her husband by letter that she had gone to reside with her mother in Asingan, Pangasinan, from which place she later moved to Dagupan City to study in a local college there.

As early as July, 1951, Benjamin Bugayong began receiving letters from Valeriana Polangco (plaintiff's sister-in-law) and some from anonymous writers (which were not produced at the hearing) informing him of alleged acts of infidelity of his wife which he did not even care to mention. On cross-examination, plaintiff admitted that his wife also informed him by letter, which he claims to have destroyed, that a certain "Eliong" kissed her. All these communications prompted him in October, 1951 to seek the advice of the Navy Chaplain as to the propriety of a legal separation between him and his wife on account of the latter's alleged acts of infidelity, and he was directed to consult instead the navy legal department.

In August, 1952, plaintiff went to Asingan, Pangasinan, and sought for his wife whom he met in the house of one Mrs. Malalang, defendant's godmother. She came along with him and both proceeded to the house of Pedro Bugayong, a cousin of the plaintiff-husband, where they stayed and lived for 2 nights and 1 day as husband and wife. Then they repaired to the plaintiff's house and again passed the night therein as husband and wife. On the second day, Benjamin Bugayong tried to verify from his wife the truth of the information he received that she had committed adultery but Leonila, instead of answering his query, merely packed up and left, which he took as a confirmation of the acts of infidelity imputed on her. After that and despite such belief, plaintiff exerted efforts to locate her and failing to find her, he went to Bacarra, Ilocos Norte, "to soothe his wounded feelings".

On November 18, 1952, Benjamin Bugayong filed in the Court of First Instance of Pangasinan a complaint for legal separation against his wife, Leonila Ginez, who timely filed an answer vehemently denying the averments of the complaint and setting up affirmative defenses. After the issues were joined and convinced that a reconciliation was not possible, the court set the case for hearing on June 9, 1953. Plaintiff's counsel announced that he was to

present 6 witnesses but after plaintiff-husband finished testifying in his favor, counsel for the defendant orally moved for the dismissal of the complaint, but the Court ordered him to file a written motion to that effect and gave plaintiff 10 days to answer the same.

The motion to dismiss was predicated on the following grounds: (1) Assuming *arguendo* the truth of the allegations of the commission of "acts of rank infidelity amounting to adultery", the cause of action, if any, is barred by the statute of limitations; (2) That under the same assumption, the acts charged have been condoned by the plaintiff-husband; and (8) That the complaint failed to state a cause of action sufficient for this court to render a valid judgment.

The motion to dismiss was answered by plaintiff and the Court, considering only the second ground of the motion to dismiss, i. e., condonation, ordered the dismissal of the action. After the motion for reconsideration filed by plaintiff was denied, the case was taken up for review to the Court of Appeals, appellant's counsel maintaining that the lower court erred:

- (a) In so prematurely dismissing the case;
- (b) In finding that there was condonation on the part of plaintiff-appellant; and
- (c) In entertaining condonation as a ground for dismissal inasmuch as same was not raised in the answer or in a motion to dismiss.

As the questions raised in the brief were merely questions of law, the Court of Appeals certified the case to this Superiority.

The Civil Code provides:

Art. 97. A petition for legal separation may be filed:

- (1) For adultery on the part of the wife and for concubinage on the part of the husband as defined in the Penal Code; or
- (2) An attempt by one spouse against the life of the other.

Art. 100. The legal separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage. Where both spouses are offenders, a legal separation cannot be claimed by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.

ART. 102. An action for legal separation cannot be filed except within one year from and after the date on which the plaintiff became cognizant of the cause and within five years from and after the date when such cause occurred.

As the only reason of the lower Court for dismissing the action was the alleged condonation of the charges of adultery that the plaintiff-husband had preferred in the complaint against his wife, We will "disregard the other 2 grounds of the motion to dismiss, as anyway they have not been raised in appellant's assignment of errors.

Condonation is the forgiveness of a marital offense constituting a ground for legal separation or, as stated in I Bouvier's Law Dictionary, p. 585, condonation is the "conditional forgiveness or remission, by a husband or wife of a matrimonial offense which the latter has committed". It is to be noted, however, that in defendant's answer she vehemently and vigorously denies having committed any act of infidelity against her husband, and even if We were to give full weight to the testimony of the plaintiff, who was the only one that had the chance of testifying in Court and link such evidence with the averments of the complaint, We would have to conclude that the facts

appearing on record are far from sufficient to establish the charge of adultery, or, as the complaint states, of "acts of rank infidelity amounting to adultery" preferred against the defendant. Certainly, the letter that plaintiff claims to have received from his sister-in-law Valeriana Polanco, which must have been too vague and indefinite as to defendant's infidelity to deserve its production in evidence; nor the anonymous letters which plaintiff also failed to present; nor the alleged letter that, according to plaintiff, his wife addressed to him admitting that she had been kissed by one Eliong, whose identity was not established and which admission defendant had no opportunity to deny because the motion to dismiss was filed soon after plaintiff finished his testimony in Court, do not amount to anything that can be relied upon.

But this is not a question at issue. In this appeal, We have to consider plaintiff's line of conduct under the assumption that he really believed his wife guilty of adultery. What did he do in such state of mind. In August, 1952, he went to Pangasinan and looked for his wife and after finding her they lived together as husband and wife for 2 nights and 1 day, after which he says that he tried to verify from her the truth of the news he had about her infidelity, but failed to attain his purpose because his wife, instead of answering his query on the matter, preferred to desert him, probably enraged for being subjected to such humiliation. And yet he tried to locate her, though in vain. Now, do the husband's attitude of sleeping with his wife for 2 nights despite his alleged belief that she was unfaithful to him, amount to a condonation of her previous and supposed adulterous acts? In the order appealed from, the Court a quo had the following to say on this point:

"In the hearing of the case, the plaintiff further testified as follows:

'Q. Now Mr. Bugayong, you have filed this action for legal separation from your wife. Please tell this Hon. Court why you want to separate from your wife?—A. I came to know that my wife is committing adultery, I consulted the chaplain and he told me to consult the legal adviser.' (p. 11, t. s. n.)

'Q. Did you finally locate her?—A. Four days later or on the fifth day since my arrival she went to the house of our godmother and as a husband I went to her to come along with me in our house but she refused.' (p. 12, t. s. n.)

'Q. What happened next?—A. I persuaded her to come along with me. She consented but I did not bring her home but brought her to the house of my cousin Pedro Bugayong.' (p. 12, t. s. n.)

'Q. How long did you remain in the house of your cousin Pedro Bugayong?—A. One day and one night.' (p. 12, t. s. n.)

'Q. That night when you stayed in the house of your cousin Pedro Bugayong as husband and wife, did you sleep together?—A. Yes, sir.' (p. 19, t. s. n.)

'Q. On the next night, when you slept in your own house, did you sleep together also as husband and wife?—A. Yes, sir.' (p. 19, t. g. n.)

'Q. When was that?—A. That was in August, 1952.' (p. 19, t. s. n.)

'Q. How many nights did you sleep together as husband and wife?—A. Only two nights.' (p. 19, t. s. n.)

"The New Civil Code of the Philippines, in its Art. 97, Says:

"A petition for legal separation may be filed:

(1) For adultery on the part of the wife and concubinage on the part of the husband as defined in the Penal Code.' and in its Art. 100 it says:

'The legal separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage. Where both spouses are offenders, legal separation can not be

claimed by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.'

"A detailed examination of the testimony of the plaintiff-husband, especially those portions quoted above, clearly shows that there was a condonation on the part of the husband for the supposed 'acts of rank infidelity amounting to adultery' committed by defendant-wife. Admitting for the sake of argument that the infidelities amounting to adultery were committed by the defendant, a reconciliation was effected between her and the plaintiff. The act of the latter in persuading her to come along with him, and the fact that she went with him and consented to be brought to the house of his cousin Pedro Bugayong and together they slept there as husband and wife for one day and one night, and the further fact that in the second night they again slept together in their house likewise as husband and wife—all these facts have no other meaning in the opinion of this court than that a reconciliation between them was effected and that there was a condonation of the wife by the husband. This reconciliation occurred almost ten months after he came to know of the acts of infidelity amounting to adultery. "In *Shackleton vs. Shackleton*, 48 N. 3. Eq. 364; 21 Atl. 93§, it has been held that 'condonation is implied from sexual intercourse after knowledge of the other infidelity. Such acts necessarily implied forgiveness. It is entirely consonant with reason and justice that if the wife freely consents to sexual intercourse after she has full knowledge of the husband's guilt, her consent should operate as a pardon of his wrong.'

"In *Tiffany's Domestic and Family Relations*, section 107 says:

'Condonation. Is the forgiveness of a marital offense constituting a ground for divorce and bars the right to a divorce. But it is on the condition, implied by the law when not express, that the wrongdoer shall not again commit the offense; and also that he shall thereafter treat the other spouse with conjugal kindness. A breach of the condition will revive the 4 original offense as a ground for divorce. Condonation may be express or implied'.

"It has been held in a long line of decisions of the various supreme courts of the different states of the U. S. that 'a single voluntary act of sexual intercourse by the innocent spouse after discovery of the offense is ordinarily sufficient to constitute condonation, especially as against the husband'. (27 *Corpus Juris Secundum*, section 61 and cases cited therein).

"In the light of the facts testified to by the plaintiff-husband, of the legal provisions above quoted, and of the various decisions above-cited, the inevitable conclusion is that the present action is untenable."

Although no acts of infidelity might have been committed by the wife, We agree with, the trial judge that the conduct of the plaintiff-husband above narrated despite his belief that his wife was unfaithful, deprives him, as alleged the offended spouse, of any action for legal separation against the offending wife, because his said conduct comes within the restriction of Article 100 of the Civil Code.

The only general rule in American jurisprudence is that any cohabitation with the guilty party, after the commission of the offense, and with the knowledge or belief on the part of the injured party of its commission, will amount to conclusive evidence of condonation; but this presumption may be rebutted by evidence (60 L. J. Prob. 73).

If there had been cohabitation, to what extent must it be to constitute condonation?

Single voluntary act of marital intercourse between the parties ordinarily is sufficient to constitute condonation, and where the parties live in the same house, it is presumed that they live on terms of matrimonial cohabitation (27 C. J. S., section 6-d).

A divorce suit will not be granted for adultery where the parties continue to live together after it was known vs. *Blartin*, 15 South 657; *Day vs. Day*, 80 Pac. 974) or there is sexual intercourse after knowledge of adultery

(Rogers vs. Rogers, 67 N. J. Eq. 534) or sleeping together for a single night (Toulson vs. Toulson, 50 Atl. 401, citing Phinizy vs. Phinizy, 114 S. E. 185, 154 Ga. 199; Collins vs. Collins, 193 So. 702), and many others. The resumption of marital cohabitation as a basis of condonation will generally be inferred, nothing appearing to the contrary, from the fact of the living together as husband and wife, especially as against the husband (Marsh vs. Marsh, 14 N. J. Eq. 315).

There is no ruling on this matter in our jurisprudence but we have no reason to depart from the doctrines laid down in the decisions of the various supreme courts of the United States above quoted.

There is no merit in the contention of appellant that the lower court erred in entertaining condonation as a ground for dismissal inasmuch as same was not raised in the answer or in a motion to dismiss, because in the case at bar, the question of condonation was raised in the second ground of the motion to dismiss. It is true that it was Hied after the answer and after the hearing had been commenced, yet that motion serves to supplement the averments of defendant's answer and to adjust the issues to the testimony of plaintiff himself (section 4, Rule 17 of the Rules of Court).

Wherefore, and on the strength of the foregoing, the order appealed from is hereby affirmed, with costs against appellant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.