

MAURICIA SOTO AND ERNESTO ONG, PLAINTIFFS AND APPELLANTS, VS. DOMINGA ONG, DEFENDANT AND APPELLEE.

G.R. No. 10121. February 03, 1916

Ponente: ARAULLO, J.

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ARAULLO, J.:

On June 21, 1913, Claro Ong died in the district of Santa Cruz of this city of Manila and, on the 29th of the same month, was buried in grave No. 4, section No. 40, lot No. 28, of the Cementerio del Norte of this city. On the 29th of December of the same year, the deceased's sister, Dominga Ong, disinterred her said brother's corpse, removing it from the grave where it lay, and conveying it to that part of the Chinese cemetery of this city set aside for the burial of Catholic Chinese, and there returned it.

These facts caused the widow of said deceased, Mauricia Soto, and her son, Ernesto Ong, to bring the complaint that originated the present proceedings, in which they prayed that judgment be rendered ordering said Dominga Ong to return the body of Claro Ong to the place in the Cementerio del Norte where it was first interred and whence it had been exhumed, to pay all the expenses occasioned thereby, and in case of noncompliance, to pay the sum of P500, the estimated cost of reburial, together with the costs of the proceedings.

In answer to the complaint, defendant prayed to be absolved therefrom, with the costs against the plaintiffs. The latter, after the hearing and the introduction of evidence, by permission of the court amended their demand for relief in the complaint and prayed that judgment be rendered declaring them to be entitled to take exclusive charge of the body of Claro Ong, to remove it from the Chinese cemetery and return it to the Cementerio del Norte; that defendant be ordered to recognize and respect this right, to pay the estimated expenses of said reburial, P500, and to indemnify plaintiffs in the sum of P5,000 for having wounded, ridiculed, and profaned plaintiffs' most delicate and sacred sentiments by removing said body from one cemetery to another without plaintiffs' or any one else's consent, and to pay the costs of the trial.

The Court of First Instance of Manila entered judgment on May 4, 1914, in which he absolved Dominga Ong from the complaint, without express finding as to costs. Plaintiffs excepted to this judgment and at the same time moved for a new trial. Their motion having been overruled, they also filed an exception to this ruling and, by the proper bill of exceptions, appealed to the Supreme Court. Appellants in their brief assign several errors to the findings of the lower court contained in the judgment appealed from and in the pronouncement therein contained favorable to the defendant.

The following stipulation of facts was made by the parties in the trial below:

- That Claro Ong was separated from his wife, one of the plaintiffs, for about 17 years, during which period he lived apart from her in another house.
- That the reason for this separation was that Claro Ong lived unlawfully with another woman, on which account his lawful wife never used to go to the house occupied by him. It is to be noted that it was Claro Ong who left the conjugal abode.

- That during the period of Claro Ong's sickness, his lawful wife did not succeed in seeing him in his house, in spite of her attempts so to do, on account of the opposition of the aforementioned woman and Ong's own two sisters, though his only son Ernesto Ong frequently went to the house and used to remain there several hours at a time to render to his father the care the latter required of him.
- That after Claro Ong's death, a committee from the Dalisay Lodge, of which the decedent had been the treasurer, repaired to the house where the corpse lay and, having already secured the permission of the widow prior to her husband's death, took charge of the body, embalmed it, laid it out in state in the masonic temple and afterwards, with the consent of the widow and the deceased's sisters, buried it in that section of the Cementerio del Norte that had been purchased by the masonic lodge as a burial ground for masons, the first body to be interred therein being that of the said Claro Ong.
- That the widow, that, is, the plaintiff, Mauricia Soto, could not go to the house of Claro Ong while he was living, for the reason previously stated, to wit, the opposition of the woman with whom he was living and that of his two sisters, but she went to see her husband's body as it lay in the masonic temple and afterwards in the cemetery; and
- That about the 29th of December of the same year, 1913, the sisters of said Claro Ong, having first obtained permission from the Bureau of Health, but without the consent of the widow and son, proceeded to exhume the remains of said deceased and transfer them to his ancestors' vault, which was situated in the Chinese cemetery and also used as a burial place for Christian Chinese.

It was also proven at the trial that at the time the Dalisay Masonic Lodge took charge of Claro Ong's body in order to embalm it, lay it out in state in the masonic temple and afterwards (with the consent of the plaintiff widow as well as of the two sisters, one of these latter being the defendant Dominga Ong, as appears in the stipulated facts) bury it in grave No. 4, section 40, lot 28, of the Cementerio del Norte, belonging to the said masonic lodge and intended as a burial place for masons, the said deceased being a mason; that the grand master of the Grand Regional Lodge of the Philippines and the venerable master of the said Dalisay Lodge addressed to said Dominga Ong and to her other sister, Maria Ong, the letter presented in evidence at the trial by the defendant herself and which is translated in her answer. In this letter they promised said two sisters of the deceased Ong and formally bound themselves to exhume the remains of Claro Ong, in order that they might be interred in his family's cemetery, immediately after the expiration of the five years fixed by the Sanitary Law (Act No. 1458) so that the exhumation might be effected without danger to the public health. It was furthermore proven that, by reason of said letter, the aforementioned Dalisay Masonic Lodge, with the knowledge and consent of the widow and son, as well as of the defendant Dominga Ong and her sister Maria, proceeded to inter the body of said Claro Ong in the Cementerio del Norte, grave 4, of the section and plot aforementioned, from which it was disinterred by Dominga Ong six months afterwards, that is, long before the expiration of the five years mentioned in said letter, without her having given previous notice thereof either to said masonic lodge or to said deceased's widow and without the consent of either the former or the latter.

The first thing to be shown by the facts proved at the trial is that (the body of Claro Ong having been buried in the Cementerio del Norte by the Dalisay Masonic Lodge to which deceased belonged, permission therefor having been secured both from his widow and two sisters, one of whom is the defendant Dominga Ong, these two sisters agreeing to the burial and that it should be for the period of five years, since the formal obligation contracted by said lodge, through its representatives, agreed to by Claro Ong's two sisters as shown by the fact of their being in possession of the said letter, Exhibit 2, and of their having presented it at the trial was that at the expiration of the said period of five years provided for in the Cemetery Act before the corpse could be exhumed, the said remains would be exhumed and buried by said masonic lodge in the Ong's family cemetery, in the plot thereof set aside for the burial of Catholic Chinese), the first thing shown was, we repeat, that the defendant Dominga Ong openly

violated the agreement made between herself and her sister, on the one hand, and said masonic lodge, on the other, made with the knowledge and consent of the plaintiff widow; she broke the contract made between them by means of the said letter, by disposing of said remains of her own accord, without counting on the consent either of said lodge or of the deceased's widow, and by taking possession of the remains after scarcely six months had elapsed since their burial, and by removing them to and reintering them in the same cemetery in which said masonic lodge had engaged itself to bury the body after five years should have elapsed from the date of the aforementioned agreement.

It cannot be admitted, as the lower court states in the judgment appealed from, that in fixing in said agreement the period of five years, reference was made only to the period fixed by the Bureau of Health for the exhumation of bodies, nor that, since the sanitary authorities granted permission for the exhumation and removal of said remains before the expiration of said period of five years, the burial of the body of said Claro Ong in this latter's family cemetery could be made and that it was a perfectly lawful act. The Dalisay Masonic Lodge and Claro Ong's widow both had a clear and positive right, recognized and admitted by defendant, to keep for the period of five years the mortal remains of said deceased in the Cementerio del Norte where they had been buried. Said lodge was not obliged to exhume them and reinter them in the Ong family's cemetery before the expiration of said five years, for this is the sole meaning of the following words contained in said letter:

"This promise and obligation shall be fulfilled immediately after the expiration of the period of five years specified by the Sanitary Law, before which the exhumation cannot take place without danger to the public health."

The possibility that the body was disinterred without danger to the public health six months after its burial in the Cementerio del Norte, as proven by the fact of defendant's having obtained the necessary permit from the Bureau of Health to disinter or exhume it and remove it to the section of the Chinese Cemetery reserved for the burial of Catholic Chinese, could confer no right upon defendant to make the disinterment by violating that agreement, nor, therefore, did it convert that unlawful act into a lawful one, for the very reason that in performing it defendant violated the right that pertained to the Dalisay Masonic Lodge and to the plaintiff, the deceased's widow (with whose previous permission said deceased's body was interred in the Cementerio del Norte by said lodge) to keep said remains in this latter cemetery for five years before finally laying them away in the burial place of the members of Claro Ong's family, that of the Catholic Chinese. From every point of view, defendant had absolutely no right to remove of her own accord the remains of her brother Claro from the grave in the section belonging to the Dalisay Masonic Lodge, and still less was she entitled to take possession of them without the knowledge and consent of said deceased's widow, whose previous permission that lodge had obtained, as defendant was aware, to inter them in said grave.

The fact that, as stated in the judgment appealed from, Claro Ong did not die in the conjugal abode, beside his wife and son, the plaintiffs, but in another house where he was living in company with his paramour and separated from his son and lawful wife, which latter was not in the habit of visiting him, can be no reason, as it was held to be by the lower court in said judgment, that said deceased's body should have been buried in the manner agreed upon by and between Claro Ong's paramour and his sister, who attended at his bedside for several days prior to his death, for, as shown by the stipulation of facts agreed upon by the parties during the trial, it was not the plaintiff Mauricia Soto who left her husband Claro Ong many years before the latter's death, but it was Claro Ong himself who left her and his son and abandoned the conjugal home to go to live unlawfully with the paramour referred to in the judgment of the court below. For this reason it was, as also appears from said stipulated facts and is recognized in the judgment itself, that this plaintiff was not wont to go to visit her husband in that house, nor did she succeed in seeing him during his last illness, notwithstanding her attempts so to do, on account of the opposition of the woman with whom Claro Ong was living in unlawful cohabitation, and of said deceased's two

sisters who, as shown by the record and stated in the judgment itself, were on good terms with said paramour and, in so far as the burial of the body of said deceased was concerned, cooperated' with their brother's concubine, the woman who had usurped in his affections the place of his honorable and lawful wife, and the woman who was the cause of the trouble that existed between the members of the family of the deceased up to the hour of his death, and who (the two sisters), on the occasion of their said brother's burial, to avoid a scandal, caused the Dalisay Masonic Lodge, to which the deceased had belonged, according to the testimony of Gregorio Cansipit, the venerable master of said lodge, to offer to take charge of the remains of said Claro Ong, he having been a member of said lodge, and of the burial of the same, which the lodge finally did with the knowledge and consent of the widow, the plaintiff, and also with the knowledge and consent of the defendant and her sister Maria Ong, in the Cementerio del Norte of this city, in accordance with the agreement contained in the letter aforementioned, Exhibit 2.

It is truly inconceivable and offensive to law, reason, and good morals, that the woman who, according to the judgment appealed from, was the paramour, the concubine of Claro Ong, the woman who lived with him in scandalous concubinage, should be considered to have any right at all to intervene in acts concerning his domestic life and the disposal of his body after his death, and that such a pretended right should be taken into account, as is done in the judgment appealed from, in connection with the claim made by deceased's sister, that is, the defendant, as a ground or reason for denying that same right to the lawful wife of said deceased, as if acts censured by law and good morals could ever be the source and origin of right.

Section 31 of Act No. 1458 of the Philippine Commission provides that if the deceased is married, the duty of burial shall devolve upon the surviving spouse. In relation with this duty there unquestionably follows the right of the person upon whom it devolves, to exercise it or to perform the act which such duty itself imposes; and in the case at bar, taking into account that duty and that right of the plaintiff Mauricia Soto with regard to the disposal of the remains of her late husband Claro Ong, the Dalisay Masonic Lodge, to which the deceased had belonged, requested and obtained said plaintiff's permission to take charge of those remains and bury them, as it did do, in the and del Norte of this city, in ground belonging to said lodge, relying also upon the knowledge and consent of the deceased's two sisters. So that the plaintiff Mauricia Soto made use of the right granted to her by law and complied with the duty it imposed upon her with respect to the burial of the body of her deceased husband Claro Ong, for that burial was made for her by said Dalisay Masonic Lodge, with her previous express permission. It is likewise unquestionable that, in connection with the right which this plaintiff had, according to law, to bury her deceased husband, and as a consequence of this same right, she also had that of keeping the body buried in the place where it had been interred by said Dalisay Lodge, in her representation and acting in her stead.

The fact that Claro Ong lived in a different house, apart, not only from his widow, but also from his son, and that at the time of his death he was not on good terms with his said widow, the plaintiff Soto, cannot be alleged in support of the contention that the provisions of said section 31 are not applicable to the case at bar, and that, as stated by the lower court in the judgment appealed from, that right cannot be invoked by said plaintiff, nor as a ground for the finding in the very judgment appealed from, that neither the widow nor the son of Claro Ong "can have a preferent right over that held by the paramour with whom the deceased voluntarily wished to live, and by the sister who attended him during the last days of his life," for, as already said, the separation of the plaintiff and her son from Claro Ong, their husband and father, respectively, that is, the fact of these two former not having lived in the same house with the latter and the estrangement between said plaintiff Mauricia Soto and the deceased that lasted up to the very moment of the latter's death, were due, not to acts of said plaintiff and her son, but to Claro Ong himself, on the one hand, and on the other, to the paramour mentioned in the judgment, who, united with the latter by a criminal and immoral passion, kept him for years and until his death apart from his lawful wife and his son, and who, in union with the sister of the deceased, who preferred to align herself with the said woman

instead of furthering the legitimate desires of the lawful wife, was always an insuperable obstacle, as appears in the agreed statement of facts, to prevent Mauricia Soto, unless she sacrificed her dignity and set aside all honor and decorum, from setting foot in the house in which her husband was living with his concubine and from attending her husband during his last sickness and during the last days of his life,—a satisfaction which she could not obtain and a right which was denied to her by that paramour, referred to in the judgment, and by the defendant and her other sister, Maria Ong, both of whom (as also appears from the stipulated facts themselves) objected to the plaintiff, the lawful wife of Claro Ong, seeing the latter during the last days of his life, notwithstanding her having attempted to do so. A simple recital of all this is sufficient to show how erroneous it is even to compare the right of the plaintiff Mauricia Soto (of which she availed herself on the burial of the body of her husband Claro Ong,— a right recognized by law, supported by reason and based on good morals, which she invoked in bringing her action in these proceedings) with the right which is held in the judgment appealed from to belong to the paramour of said deceased, jointly with the defendant sister of Claro Ong.

If the plaintiff Mauricia Soto, as the surviving spouse of the deceased Claro Ong, has an unquestionable right to keep the mortal remains of her husband in the Cementerio del Norte, where they were interred by the Dalisay Masonic Lodge,—a right which was arbitrarily and unreasonably violated by the defendant,—still more unquestionable and clear, though not prescribed by said Act No. 1458, is the right of the other plaintiff, Ernesto Ong (the legitimate son born of the lawful marriage of Claro Ong with the plaintiff Mauricia Soto), by reason of his being the nearest relative of the deceased by blood,—a circumstance which in some cases decided by the courts of Spain has been taken into account in establishing preference in the person who enjoys such relationship over the rights of the widow, that is, those of the surviving' wife. So that, even applying to this specific case the principle laid down by said courts in similar cases, strict justice requires that the relief demanded in the complaint be granted, by duly restoring the plaintiffs to the use and enjoyment of the right of which they were deprived by said defendant by exhuming the mortal remains of the late Claro Ong from the grave where they now lie in the Chinese Catholic Cemetery and reintering them in the grave where they originally reposed in the Cementerio del Norte of this city, all at defendant's expense. To this end the latter shall pay to the plaintiffs the sum of P200, which is considered sufficient to cover the cost of such disinterment and reburial, neither of which may be considered a menace to public health, in view of the methods that are known and can be employed to avoid all danger that might arise therefrom, and of the requisites and formalities which are required to be complied with by the existing sanitary laws and regulations.

The remains of the deceased Claro Ong having been exhumed in the Cementerio del Norte and reburied in the Chinese Catholic Cemetery by the defendant Dominga Ong, not for the purpose of wounding or offending the sentiments of said deceased's widow and son, the plaintiffs, nor of profaning those remains, but, on the contrary, with the object of keeping the said remains in the Ong family's burial plot in said cemetery, and although such acts were performed by defendant, as aforesaid, to the injury of the rights of the deceased's widow and son, and before the expiration of the five years during which those remains should have lain in the grave of the Cementerio del Norte where they were, in plain violation of the agreement between the defendant and the Dalisay Masonic Lodge in conjunction with the plaintiff Mauricia Soto, there is no reason why the defendant should be ordered to indemnify the plaintiffs in the sum of P5,000 prayed for in the complaint.

For all of the foregoing reasons, we absolve defendant from the complaint in so far as concerns said indemnity of P5,000 demanded therein, and we hold and declare that plaintiffs are entitled to take charge of the body of Claro Ong, to exhume it from the grave where it lies in the Chinese Cemetery of this city, and to return it to and reinter it in the grave in which it originally lay in the Cementerio del Norte. We further order defendant to recognize and respect this right of the plaintiffs, and to pay to them the sum of P200 for the expenses of the exhumation and reinterment of the remains of said deceased, as aforementioned. The judgment appealed from is hereby affirmed

in so far as it agrees with this decision, and reversed in so far as it does not. The defendant shall also pay the costs of first instance. No special finding is made with respect to those of this second instance. So ordered.

Arellano, C. J., and Torres, J., concur.

Carson and Trent, JJ., concur in the result.

Johnson, J., dissents.

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