

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND RORIDEL OLAVIANO MOLINA, RESPONDENTS.*G.R. No. 108763. February 13, 1997*

Ponente: PANGANIBAN, J.

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The Family Code of the Philippines provides an entirely new ground (in addition to those enumerated in the Civil Code) to assail the validity of a marriage, namely, “psychological incapacity.” Since the Code’s effectivity, our courts have been swamped with various petitions to declare marriages void based on this ground. Although this Court had interpreted the meaning of psychological incapacity in the recent case of Santos vs. Court of Appeals, still many judges and lawyers find difficulty in applying said novel provision in specific cases. In the present case and in the context of the herein assailed Decision of the Court of Appeals, the Solicitor General has labelled -- exaggerated to be sure but nonetheless expressive of his frustration -- Article 36 as the “most liberal divorce procedure in the world.” Hence, this Court in addition to resolving the present case, finds the need to lay down specific guidelines in the interpretation and application of Article 36 of the Family Code.

Before us is a petition for review on certiorari under Rule 45 challenging the January 25, 1993 Decision[1] of the Court of Appeals[2] in CA-G.R. CV No. 34858 affirming in toto the May 14, 1991 decision of the Regional Trial Court of La Trinidad,[3] Benguet, which declared the marriage of respondent Roridel Olaviano Molina to Reynaldo Molina void ab initio, on the ground of “psychological incapacity” under Article 36 of the Family Code.

The Facts

This case was commenced on August 16, 1990 with the filing by respondent Roridel O. Molina of a verified petition for declaration of nullity of her marriage to Reynaldo Molina. Essentially, the petition alleged that Roridel and Reynaldo were married on April 14, 1985 at the San Agustin Church[4] in Manila; that a son, Andre O. Molina was born; that after a year of marriage, Reynaldo showed signs of “immaturity and irresponsibility” as a husband and a father since he preferred to spend more time with his peers and friends on whom he squandered his money; that he depended on his parents for aid and assistance, and was never honest with his wife in regard to their finances, resulting in frequent quarrels between them; that sometime in February 1986, Reynaldo was relieved of his job in Manila, and since then Roridel had been the sole breadwinner of the family; that in October 1986 the couple had a very intense quarrel, as a result of which their relationship was estranged; that in March 1987, Roridel resigned from her job in Manila and went to live with her parents in Baguio City; that a few weeks later, Reynaldo left Roridel and their child, and had since then abandoned them; that Reynaldo had thus shown that he was psychologically incapable of complying with essential marital obligations and was a highly immature and habitually quarrelsome individual who thought of himself as a king to be served; and that it would be to the couple’s best interest to have their marriage declared null and void in order to free them from what appeared to be an incompatible marriage from the start.

In his Answer filed on August 28, 1989, Reynaldo admitted that he and Roridel could no longer live together as husband and wife, but contended that their misunderstandings and frequent quarrels were due to (1) Roridel's strange behavior of insisting on maintaining her group of friends even after their marriage; (2) Roridel's refusal to perform some of her marital duties such as cooking meals; and (3) Roridel's failure to run the household and handle their finances.

During the pre-trial on October 17, 1990, the following were stipulated:

- "1. That the parties herein were legally married on April 14, 1985 at the Church of St. Augustine, Manila;
2. That out of their marriage, a child named Albert Andre Olaviano Molina was born on July 29, 1986;
3. That the parties are separated-in-fact for more than three years;
4. That petitioner is not asking support for her and her child;
5. That the respondent is not asking for damages;
6. That the common child of the parties is in the custody of the petitioner wife."

Evidence for herein respondent wife consisted of her own testimony and that of her friends Rosemarie Ventura and Maria Leonora Padilla as well as of Ruth G. Lalas, a social worker, and of Dr. Teresita Hidalgo-Sison, a psychiatrist of the Baguio General Hospital and Medical Center. She also submitted documents marked as Exhibits "A" to "E-1." Reynaldo did not present any evidence as he appeared only during the pre-trial conference.

On May 14, 1991, the trial court rendered judgment declaring the marriage void. The appeal of petitioner was denied by the Court of Appeals which affirmed in toto the RTC's decision. Hence, the present recourse.

The Issue

In his petition, the Solicitor General insists that "the Court of Appeals made an erroneous and incorrect interpretation of the phrase 'psychological incapacity' (as provided under Art. 36 of the Family Code) and made an incorrect application thereof to the facts of the case," adding that the appealed Decision tended "to establish in effect the most liberal divorce procedure in the world which is anathema to our culture."

In denying the Solicitor General's appeal, the respondent Court relied[5] heavily on the trial court's findings "that the marriage between the parties broke up because of their opposing and conflicting personalities." Then, it added its own opinion that "the Civil Code Revision Committee (hereinafter referred to as the Committee) intended to liberalize the application of our civil laws on personal and family rights x x x." It concluded that:

"As a ground for annulment of marriage, We view psychological incapacity as a broad range of mental and behavioral conduct on the part of one spouse indicative of how he or she regards the marital union, his or her personal relationship with the other spouse, as well as his or her conduct in the long haul for the attainment of the principal objectives of marriage. If said conduct, observed and considered as a whole, tends to cause the union to self-destruct because it defeats the very objectives of marriage, then there is enough reason to leave the spouses to their individual fates.

In the case at bar, We find that the trial judge committed no indiscretion in analyzing and deciding the instant case, as it did, hence, We find no cogent reason to disturb the findings and conclusions thus made."

Respondent, in her Memorandum, adopts these discussions of the Court of Appeals.

The petitioner, on the other hand, argues that "opposing and conflicting personalities" is not equivalent to

psychological incapacity, explaining that such ground “is not simply the neglect by the parties to the marriage of their responsibilities and duties, but a defect in their psychological nature which renders them incapable of performing such marital responsibilities and duties.”

The Court’s Ruling

The petition is meritorious.

In *Leouel Santos vs. Court of Appeals*,^[6] this Court, speaking thru Mr. Justice Jose C. Vitug, ruled that “psychological incapacity should refer to no less than a mental (not physical) incapacity x x x and that (t)here is hardly any doubt that the intendment of the law has been to confine the meaning of ‘psychological incapacity’ to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. This psychologic condition must exist at the time the marriage is celebrated.” Citing Dr. Gerardo Veloso, a former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila,^[7] Justice Vitug wrote that “the psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.”

On the other hand, in the present case, there is no clear showing to us that the psychological defect spoken of is an incapacity. It appears to us to be more of a “difficulty,” if not outright “refusal” or “neglect” in the performance of some marital obligations. Mere showing of “irreconcilable differences” and “conflicting personalities” in no wise constitutes psychological incapacity. It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness.

The evidence adduced by respondent merely showed that she and her husband could not get along with each other. There had been no showing of the gravity of the problem; neither its juridical antecedence nor its incurability. The expert testimony of Dr. Sison showed no incurable psychiatric disorder but only incompatibility, not psychological incapacity. Dr. Sison testified:^[8]

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Q It is therefore the recommendation of the psychiatrist based on your findings that it is better for the Court to annul (sic) the marriage?

A Yes, Your Honor.

Q There is no hope for the marriage?

A There is no hope, the man is also living with another woman.

Q Is it also the stand of the psychiatrist that the parties are psychologically unfit for each other but they are psychologically fit with other parties?

A Yes, Your Honor.

Q Neither are they psychologically unfit for their professions?

A Yes, Your Honor.

The Court has no more questions.”

In the case of Reynaldo, there is no showing that his alleged personality traits were constitutive of psychological incapacity existing at the time of marriage celebration. While some effort was made to prove that there was a failure to fulfill pre-nuptial impressions of “thoughtfulness and gentleness” on Reynaldo’s part and of being “conservative, homely and intelligent” on the part of Roridel, such failure of expectation is not indicative of antecedent psychological incapacity. If at all, it merely shows love’s temporary blindness to the faults and

blemishes of the beloved.

During its deliberations, the Court decided to go beyond merely ruling on the facts of this case vis-a-vis existing law and jurisprudence. In view of the novelty of Art. 36 of the Family Code and the difficulty experienced by many trial courts in interpreting and applying it, the Court decided to invite two amici curiae, namely, the Most Reverend Oscar V. Cruz,[9] Vicar Judicial (Presiding Judge) of the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, and Justice Ricardo C. Puno,[10] a member of the Family Code Revision Committee. The Court takes this occasion to thank these friends of the Court for their informative and interesting discussions during the oral argument on December 3, 1996, which they followed up with written memoranda.

From their submissions and the Court's own deliberations, the following guidelines in the interpretation and application of Art. 36 of the Family Code are hereby handed down for the guidance of the bench and the bar:

(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,[11] 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 [12] 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 psychically 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 ejusdem generis,[13] 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. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(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. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

“The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.”[14]

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally -- subject to our law on evidence -- what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church -- while remaining independent, separate and apart from each other -- shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(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.

In the instant case and applying *Leouel Santos*, we have already ruled to grant the petition. Such ruling becomes even more cogent with the use of the foregoing guidelines.

WHEREFORE, the petition is GRANTED. The assailed Decision is REVERSED and SET ASIDE. The marriage of Roridel Olaviano to Reynaldo Molina subsists and remains valid.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Bellosillo, Melo, Puno, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and Torres, Jr., JJ., concur

Padilla, J., See Separate Statement.

Romero, J., See Separate Statement.

Vitug, J., Please see Concurring opinion.

[1] Rollo pp. 25-33.

[2] Sixteenth Division composed of J. Segundino G. Chua, ponente and chairman; JJ. Serafin V.C. Guingona and Ricardo P. Galvez, concurring.

[3] Presided by Judge Heilia S. Mallare-Phillipps.

[4] Solemnized by Fr. Jesus G. Encinas.

[5] The Court of Appeals reproduced in its Decision a substantial portion of the RTC Decision as follows:

“To sustain her claim that respondent is psychologically incapacitated to comply with his marital obligations, petitioner testified that he is immature, irresponsible, dependent, disrespectful, arrogant, a chronic liar, and an infidel. These characteristics of respondent are based on petitioner’s testimony that the former failed to be gainfully employed after he was relieved from the Office of the Government Corporate Counsel sometime in February, 1986, leaving petitioner as the sole breadwinner of the family. Also when they were separated in fact, respondent practically abandoned both petitioner-mother and son except during the first few months of separation when respondent regularly visited his son and gave him a monthly allowance of P1,000.00 for about two to four months. Respondent is likewise dependent on his parents for financial aid and support as he has no savings, preferring to spend his money with his friends and peers. A year after their marriage, respondent informed petitioner that he bought a house and lot at BF Homes, Parañaque for about a million pesos. They then transferred there only for the petitioner to discover a few months later that they were actually renting the house with the respondent’s parents responsible for the payment of the rentals. Aside from this, respondent would also lie about his salary and ability. And that at present, respondent is living with his mistress and their child, which fact he does not deny.

It is unfortunate that the marriage between petitioner and respondent turned sour if we look at the background of their relationship. During their college days, when they were still going steady, respondent observed petitioner to be conservative, homely, and intelligent causing him to believe then that she would make an ideal wife and mother. Likewise, petitioner fell in love with respondent because of his thoughtfulness and gentleness. After a year, however, they decided to break their relationship because of some differences in their personalities. Almost five (5) years later, while they were working in Manila, petitioner and respondent rekindled their love affair. They became very close and petitioner was glad to observe a more mature respondent. Believing that they knew each other much better after two years of going steady, they decided to settle down and get married. It would seem, therefore, that petitioner and respondent knew each other well and were then prepared for married life.

During their marriage, however, the true personalities of the parties cropped-up and dominated their life together. Unexpectedly on both their parts, petitioner and respondent failed to respond properly to the situation. This failure resulted in their frequent arguments and fightings. In fact, even with the intervention and help of their parents who arranged for their possible reconciliation, the parties could not come to terms.

It seems clear at this stage that the marriage between the parties broke-up because of their opposing and conflicting personalities (sic). Neither of them can accept and understand the weakness of each other. No one gives in and instead, blame each other for whatever problem or misunderstanding/s they encounter. In fine, respondent cannot solely responsible for the failure of other (sic) marriage. Rather, this resulted because both parties cannot relate to each other as husband and wife which is unique and requisite in marriage.

Marriage is a special contract of permanent union between a man and woman with the basic objective of establishing a conjugal and family life. (Article 1, Family Code). The unique element of permanency of union signifies a continuing, developing, and lifelong relationship between the parties. Towards this end, the parties must fully understand and accept the (implications and consequences of being permanently) united in marriage. And the maintenance of this relationship demands from the parties, among others, determination to succeed in their marriage as well as heartfelt understanding, acceptance, cooperation, and support for each other. Thus, the Family Code requires them to live together, to observe mutual (love, respect and fidelity, and render mutual help and support. Failure to observe) and perform these fundamental roles of a husband and a wife will most likely lead to the break-up of the marriage. Such is the unfortunate situation in this case.” (Decision, pp. 5-8; Original Records, pp. 70-73)

[6] 240 SCRA 20, 34, January 4, 1995.

[7] Quoted from Justice Alicia Sempio-Diy, Handbook on the Family Code, First Edition, 1988.

[8] TSN, April 6, 1991, p. 5.

[9] The National Appellate Matrimonial Tribunal reviews all decisions of the marriage tribunals of each archdiocese or diocese in the country. Aside from heading the Appellate Tribunal, Most. Rev. Cruz is also incumbent president of the Catholic Bishop's Conference of the Philippines, Archbishop of Dagupan Lingayen, and holds the degrees of Doctor of Canon Law and Doctor of Divinity. Archbishop Cruz was also Secretaary General of the Second Plenary Council of the Philippines -PCP II- held from January 20, 1991 to February 17, 1991, which is the rough equivalent of a parliament or constitutional convention in the Philippine Church, and where the ponente, who was a council member, had the privilege of being overwhelmed by his keen mind and prayerful discernments.

[10] Justice Puno was a former member of the Court of Appeals, retired Minister of Justice, author, noted civil law professor and law practitioner.

[11]

“ARTICLE XV”

THE FAMILY

Section 1. The State recognizes the Filipino Family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the state.

Section 3. The state shall defend;

- (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
- (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation , and other conditions prejudicial to their development;
- (3) The right of the family to a family living wage and income;
- (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

Section 4. The family has the duty to care for its elderly members but the state may also do so through just programs of social security."

[12] "Art. 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this code."

[13] Salita vs. Magtolis 233 SCRA 100, June 13, 1994.

[14] This text is taken from the Memorandum of Archbishop Cruz. On the other hand, the text used in Santos vs. CA reads:

xxx xxx xxx

3. Who for causes of psychological nature are unable to assume the essential obligations of marriage.”

The difference in wording between this and that in Arch. Cruz’s Memorandum is due to the fact that the original Canon is written in Latin and both versions are differently-worded English translations.

SEPARATE STATEMENT

PADILLA, J.:

I concur in the result of the decision penned by Mr. Justice Panganiban but only because of the peculiar facts of the case. As to whether or not psychological incapacity exist in a given case calling for annulment of marriage, depends crucially, more than in any field of the law, on the facts of the case. In *Leouel Santos v. Court of Appeals and Julia Rosario-Bedia Santos*, G.R. No. 112019, 4 January 1995, 240 SCRA 20-36, I maintained, and I still maintain, that there was psychological incapacity on the part of the wife to discharge the duties of a wife in a valid marriage. The facts of the present case, after an indepth study, do not support a similar conclusion. Obviously, each case must be judged, not on the basis of a priori assumptions, predilections or generalizations but according to its own facts. In the field of psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is no “all fours” with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court.

SEPARATE OPINION

ROMERO, J.:

The majority opinion, overturning that of the Court of appeals which affirmed the Regional Trial Court ruling, upheld petitioner Solicitor General’s position that ‘opposing and conflicting personalities’ is not equivalent to psychological incapacity, for the latter “is not simply the neglect by the parties to the marriage of their responsibilities and duties, but a defect in their psychological nature which renders them incapable of performing such marital responsibilities and duties.”

In the present case, the alleged personality traits of Reynaldo, the husband, did not constitute so much “psychological incapacity” as a “difficulty,” if not outright “refusal” or “neglect” in the performance of some marital obligations. “It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness.”

I would add that neither should the incapacity be the result of mental illness. For if it were due to insanity or defects in the mental faculties short of insanity, there is a resultant defect or vice of consent, thus rendering the marriage annulable under Art. 45 of the Family Code.

That the intent of the members of the U.P Law Center’s Civil Code Revision Committee was to exclude mental inability to understand the essential nature of marriage and focus strictly on psychological incapacity is demonstrated in the way the provision in question underwent revisions.

At the Committee meeting of July 26, 1986, the draft provision read:

“(7) Those marriages contracted by any party who, at the time of the celebration, was wanting in the sufficient

use of reason or judgement to understand the essential nature of marriage or was psychologically or mentally incapacitated to discharge the essential marital obligations, even if such lack of incapacity is made manifest after the celebration.”

The twist and turns which the ensuing discussion took finally produced the following revised provision even before the session was over:

“(7) That contracted by any party who, at the time of the celebration, was psychologically incapacitated to discharge the essential marital obligations, even if such lack or incapacity becomes manifest after the celebration.”

Noticeably, the immediately preceding formulation above has dropped any reference to “wanting in the sufficient use of reason or judgment to understand the essential nature or marriage” and to mentally incapacitated.” It was explained that these phrases refer to “defects in the mental faculties vitiating consent, which is not the idea... but lack of appreciation of one’s mental obligation.” There being a defect in consent, “it is clear that it should be a ground for voidable marriage because there is the appearance of consent and it is capable of convalidation for the simple reason that there are lucid intervals and there are cases when the insanity is curable.... Psychological incapacity does not refer to mental faculties and has nothing to do with consent; it refers to obligations attendant to marriage.”[1]

My own position as a member of the Committee then was that psychological incapacity is, in a sense, insanity of a lesser degree.

As to the proposal of Justice Caguio to use the term “psychological or mental impotence,” Archbishop Oscar Cruz opined in the earlier February 9, 1984 session that this term “is an invention of some churchmen who are moralist but not canonist, that is why it is considered a weak phrase.” He said that the Code of Canon Law would rather express it as “psychological or mental incapacity to discharge....” Justice Ricardo C. Puno opined that sometimes a person may be psychologically impotent with one but not with another.

One of the guidelines enumerated in the majority opinion for the interpretation and application of Art. 36 is: “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.”

The Committee, through Prof. Araceli T. Barrera, considered the inclusion of the phrase “and is incurable” but Prof. Esteban B. Bautista commented that this would give rise to the question of how they will determine curability and Justice Caguioa agreed that it would be more problematic. Yet the possibility that one may be cured after the psychological incapacity becomes manifest after the marriage was not ruled out by Justice Puno and Justice Alice Sempio-Diy. Justice Caguioa suggested that the remedy was to allow the afflicted spouse to remarry.

For clarity, the Committee classified the bases for determining void marriages, viz:

1. lack of one or more of the essential requisites of marriage as contract;
2. reasons of public policy;
3. special cases and special situations.

The ground of psychological incapacity was subsumed under “special cases and special situations,” hence its special treatment in Art. 36 in the Family Code as finally enacted.

Nowhere in the Civil Code provisions on Marriage is there a ground for avoiding or annulling marriages that even

comes close to being psychological in nature.

Where consent is vitiated due to circumstances existing at the time of the marriage, such marriage which stands valid until annulled is capable of ratification or convalidation.

On the other hand, for reasons of public policy or lack of essential requisites, some marriages are void from the beginning.

With the revision of Book I of the Civil Code, particularly the provisions on Marriage, the drafters, now open to fresh winds of change in keeping with the more permissive mores and practices of the time, took a leaf from the relatively liberal provisions of Canon Law.

Canon 1095 which states, inter alia, that the following persons are incapable of contracting marriage: “3. (those who, because of causes of psychological nature, are unable to assume the essential obligations of marriage” provided the model for what is now Art. 36 of the Family Code: “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.

It bears stressing that unlike in Civil Law, Canon Law recognizes only two types of marriages with respect to their validity: valid and void. Civil Law, however, recognizes an intermediate state, the voidable or annulable marriages. When the Ecclesiastical Tribunal “annuls” a marriage, it actually declares the marriage null and void, i.e., it never really existed in the first place, for a valid sacramental marriage can never be dissolved. Hence, a properly performed and consummated marriage between two living Roman Catholics can only be nullified by the formal annulment process which entails a full tribunal procedure with a Court selection and a formal hearing.

Such so-called church “annulments” are not recognized by the Civil Law as severing the marriage ties as to capacitate the parties to enter lawfully into another marriage. The grounds for nullifying civil marriage, not being congruent with those laid down by Canon Law, the former being more strict, quite a number of married couples have found themselves in limbo – freed from the marriage bonds in the eyes of the Catholic Church but yet unable to contract a valid civil marriage under state laws. Heedless of the civil law sanctions, some persons contract new marriages or enter into live-in relationships.

It was precisely to provide a satisfactory solution to such anomalous situations that the Civil Law Revision Committee decided to engraft the Canon Law concept of psychological incapacity into the Family Code – and classified the same as a ground for declaring marriages void ab initio or totally inexistent from the beginning.

A brief historical note on the Old Canon Law (1917). This Old Code, while it did not provide directly for psychological incapacity, in effect recognized the same indirectly from a combination of three old canons: “Canon #1081 required persons to be ‘capable according to law’ in order to give valid consent; Canon #1082 required that persons ‘be at least not ignorant’ of the major elements required in marriage; and Canon 1087 (the force and fear category) required that internal and external freedom be present in order for consent to be valid. This line of interpretation produced two distinct but related grounds for annulment, called ‘lack of due discretion’ and lack of due competence’. Lack of due discretion means that the person did not have the ability to give valid consent at the time of the wedding and therefore the union is invalid. Lack of due competence means that the person was incapable of carrying out the obligations of the promise he or she made during the wedding ceremony.

“Favorable annulment decisions by the Roman Rote in the 1950s and 1960s involving sexual disorders such as homosexuality and nymphomania laid the foundation for a broader approach to the kind of proof necessary for psychological grounds for annulment. The Rota had reasoned for the first time in several cases that the capacity to give valid consent at the time of marriage was probably not present in persons who had displayed such problems

shortly after the marriage. The nature of a cautious willingness to use this kind of hindsight, the way was paved for what came after 1970. Diocesan Tribunals began to accept proof of serious psychological problems that manifest themselves shortly after the ceremony as proof of an inability to give valid consent at the time of the ceremony.

Furthermore, and equally significant, the professional opinion of a psychological expert become increasingly important in such cases. Data about the person's entire life, both before and after the ceremony, were presented to these experts and they were asked to give professional opinions about a party's mental capacity at the time of the wedding. These opinions were rarely challenged and tended to be accepted as decisive evidence of lack of valid consent.

The church took no pains to point out that its new openness in this area did not amount to the addition of new grounds for annulment, but rather was an accommodation by the Church to the advances made in psychology during the past decades. There was now the expertise to provide the all-important connecting link between a marriage breakdown and premarital causes.

During the 1970s, the Church broadened its whole idea of marriage from that of a legal contract to that of a covenant. The result of this was that it could no longer be assumed in annulment cases that a person who could intellectually understand the concept of marriage could necessarily give valid consent to marry. The ability to both grasp and assume the real obligations of a mature, lifelong commitment are now considered a necessary prerequisite to valid matrimonial consent.”[2]

Rotal decisions continued applying the concept of incipient psychological incapacity, “not only to sexual anomalies but all kinds of personality disorders that incapacitate a spouse or both spouses from assuming or carrying out the essential obligations of marriage. For marriage... is not merely cohabitation or the right of the spouses to each other's body for heterosexual acts, but is, in its totality, the right to the community of the whole of life; i.e., the right to a developing, lifelong relationship. Rotal decision since 1973 have refined the meaning of psychological or psychic capacity for marriage as presupposing the development of an adult personality; as meaning the capacity of the spouses to give themselves to each other and to accept the other as a distinct person; that the spouses must be ‘other oriented’ since the obligations of marriage are rooted in a self-giving love; and that the spouses must have the capacity for interpersonal relationship because marriage is more than just a physical reality but involves a true intertwining of personalities. The fulfillment of the obligations of marriage depends, according to church decisions, on the strength of this interpersonal relationship. A serious incapacity for interpersonal sharing and support is held to impair the relationship and consequently, the ability to fulfill the essential marital obligations. The marital capacity of one spouse is not considered in isolation but in reference to the fundamental relationship to the other spouse.[3]

Fr. Green, in an article in Catholic Mind, lists six elements necessary to the mature marital relationship:

“The courts consider the following elements crucial to the marital commitment: (1) a permanent and faithful commitment to the marriage partner; (2) openness to children and partner; (3) stability; (4) emotional maturity; (5) financial responsibility; (6) an ability to cope with the ordinary stresses and strains of marriage, etc.”

Fr. Green goes on to speak about some of the psychological conditions that might lead to the failure of a marriage:

“At stake is a type of constitutional impairment precluding conjugal communion even with the best intentions of the parties. Among the psychic factors possibly giving rise to his or her inability to fulfill marital obligations are the following: (1) antisocial personality with its fundamental lack of loyalty to persons or sense or moral values; (2) hyperesthesia, where the individual has no real freedom of sexual choice; (3) the inadequate personality where

personal responses consistently fall short of reasonable expectations.

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The psychological grounds are the best approach for anyone who doubts whether he or she has a case for an annulment on any other terms. A situation that does not fit into any of the more traditional categories often fits very easily into the psychological category.

As new as the psychological grounds are, experts are already detecting a shift in their use. Whereas originally the emphasis was on the parties' inability to exercise proper judgment at the time of the marriage (lack of due discretion), recent cases seem to be concentrating on the parties' incapacity to assume or carry out their responsibility and obligations as promised (lack of due competence). An advantage to using the ground of lack of due competence is that at the time the marriage was entered into civil divorce and breakup of the family almost always is proof of someone's failure to carry out marital responsibilities as promised at the time the marriage was entered into."^[4]

In the instant case, 'opposing and conflicting personalities' of the spouses were not considered equivalent to psychological incapacity. As well in *Santos v. Court of Appeals* cited in the ponencia, the court held that the failure of the wife to return home from the U.S. or to communicate with her husband for more than five years is not proof of her psychological incapacity as to render the marriage a nullity.^[5] Therefore, Art. 36 is inapplicable and the marriages remain valid and subsisting.

However in the recent case of *Chi Ming Tsoi v. Court of Appeals*,^[6] this Court upheld both the Regional Trial Court and the Court of Appeals in declaring the presence of psychological incapacity on the part of the husband. Said petitioner husband, after ten (10) months' sleeping with his wife never had coitus with her, a fact he did not deny but he alleged that it was due to the physical disorder of his wife which, however, he failed to prove. Goaded by the indifference and stubborn refusal of her husband to fulfill a basic marital obligation described as "to procreate children based on the universal principle that procreation of children through sexual cooperation is the basic end of marriage," the wife brought the action in the lower court to declare the marriage null.

The Court, quoting Dr. Gerardo Veloso, a former Presiding Judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila (Branch I) on psychological incapacity, concluded:

"If a spouse, although physically capable but simply refuses to perform his or her essential marriage obligations, and the refusal is senseless and constant, Catholic marriage tribunals attribute the causes to psychological incapacity than to stubborn refusal. Senseless and protracted refusal is equivalent to psychological incapacity. Thus, the prolonged refusal of a spouse to have sexual intercourse with his or her spouse is considered a sign of psychological incapacity."

We declared:

"This Court, finding the gravity of the failed relationship in which the parties found themselves trapped in its mire of unfulfilled vows and unconsumated marital obligations, can do no less but sustain the studied judgment of respondent appellate court."

I concur with the majority opinion that the herein marriage remains valid and subsisting absent psychological incapacity (under Art. 36 of the Family Code) on the part of either or both of the spouses.

[1] Justice Caguioa's explanation in the Minutes of July 26, 1986 of the Civil Code Revision Committee of the U.P. Law Center.

[2] Zwack, Joseph P., Annulment, A Step-by-Step Guide.

[3] The Code of Canon Law, A Text and Commentary, The Canon Law Society of America, Paulist Press, New York, 1985.

[4] Zwack, Ibid., p. 47.

[5] G.R. No. 112019, 240 SCRA 20 (1995).

[6] G.R. No. 119190 (1997).

CONCURRING OPINION

VITUG, J.:

I fully concur with my esteemed colleague Mr. Justice Artemio V. Panganiban in his ponencia, and I find to be most helpful the guidelines that he prepared for the bench and the bar in the proper appreciation of Article 36 of Executive Order No. 209 (“THE FAMILY CODE of the Philippines”). The term “psychological incapacity” was neither defined nor exemplified by the Family Code. Thus-

“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.”

The Revision Committee, constituted under the auspices of the U.P. Law Center, which drafted the Code explained:

“(T)he Committee would like the judge to interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decision of church tribunals which, although, not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law.”[1]

Article 36 of the Family Code was concededly taken from Canon 1095 of the New Code of Canon Law –

“Canon 1095. (The following persons) are incapable of contracting marriage; (those) –

“1. who lack sufficient use of reason;

“2. who suffer from a grave defect of discretion of judgment concerning essential matrimonial rights and duties, to be given and accepted mutually;

“3. who for causes of psychological nature are unable to assume the essential obligations of marriage” –

that should give much value to Canon Law jurisprudence as an aid to the interpretation and construction of the statutory enactment.[2]

The principles in the proper application of the law teach us that the several provisions of Code must be read like a congruent whole. Thus, in determining the import of “psychological incapacity” under Article 36, one must also read it along with, albeit to be taken as distinct from, the other grounds enumerated in the Code, like Articles 35, 37, 38, and 41 that would likewise, but for distinct reasons, render the marriage void ab initio, or Article 45 that would make the marriage merely voidable, or Article 55 that could justify a petition for legal separation. Care must be observed so that these various circumstances are not applied so indiscriminately as if the law were indifferent on the matter.

I would wish to reiterate the Court’s statement in Santos vs. Court of Appeals;[3] viz:

“(T)he use of the phrase ‘psychological incapacity’ under Article 36 of the Code has not been meant to comprehend all such possible cases of psychoses as. Likewise mentioned by some ecclesiastical authorities, extremely low intelligence, immaturity, and like circumstances x x x. Article 36 of the Family Code cannot be taken and construed independently of, but must stand in conjunction with, existing precepts in our law on marriage. Thus, correlated, ‘psychological incapacity’ 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 discharge by the parties to the marriage which, as so expressed by Article 68 of the Family Code, include their mutual obligation to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of ‘psychological incapacity’ to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. This psychologic condition must exist at the time the marriage is celebrated. The law does not evidently envision, upon the other hand, an inability of the spouse to have sexual relations with the other. This conclusion is implicit under Article 54 of the Family Code which considers children conceived prior to the judicial declaration of nullity of the void marriage to be ‘legitimate.’

“The other forms of psychoses, if existing at the inception of marriage, like the state of a party being of unsound mind or concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism, merely renders the marriage contract voidable pursuant to Article 46, Family Code. If drug addiction, habitual alcoholism, lesbianism or homosexuality should occur only during the marriage, they become mere grounds for legal separation under Article 55 of the Family Code. This provisions of the Code, however, do not necessarily preclude the possibility of these various circumstances being themselves, depending on the degree and severity of the disorder, indicia of psychological incapacity.”[4]

In fine, the term “psychological incapacity,” to be a ground for the nullity of marriage under Article 36 of the Family Code, must be able to pass the following test; viz:

First, the incapacity must be psychological or mental, not physical, in nature;

Second, The psychological incapacity must relate to the inability, not mere refusal, to understand, assume and discharge the basic marital obligations of living together, observing love, respect and fidelity and rendering mutual help and support;

Third, the psychologic conditions must exist at the time the marriage is contracted although its overt manifestations may occur only thereafter; and

Fourth, the mental disorder must be grave or serious and incurable.

It may well be that the Family Code Revision Committee has envisioned Article 36, as not a few observers would suspect, as another form of absolute divorce or, as still others would also put it, to be an alternative to divorce; however, the fact still remains that the language of the law has failed to carry out, even if true, any such intendment. It might have indeed turned out for the better; if it were otherwise, there could be good reasons to doubt the constitutionality of the measure. The fundamental law itself, no less, has laid down in terse language its unequivocal command on how the State should regard marriage and the family, thus –

Section 2, Article XV:

“Sec. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.”

Section 12, Article II:

“Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic

autonomous social institution x x x.”

Section 1, Article XV:

“Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.” (The 1987 Constitution)

The case of *Marcelino vs. Cruz*, 121 SCRA 51, might here be significant not so much for the specific issue there resolved but for the tone it has set. The Court has held that constitutional provisions are to be considered mandatory unless by necessary implication, a different intention is manifest such that to have them enforced strictly would cause more harm than by discharging them. It is quite clear to me that the constitutional mandate on marriage and the family has not been meant to be simply directory in character, nor for mere expediency or convenience, but one that demands a meaningful, not half-hearted, respect.

[1] Mr. Justice Josue N. Bellosillo, quoting Mme. Justice Alicia V. Sempio-Diy, in *Salita vs. Hon. Magtolis*, 233 SCRA 100.

[2] In *Santos vs. Court of Appeals*, 240 SCRA 20.

[3] *Supra*.

[4] At pages 34-35.

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