

LEOUEL SANTOS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND JULIA ROSARIO BEDIA-SANTOS, RESPONDENTS.

G.R. No. 112019. January 04, 1995

Ponente: VITUG, J.

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VITUG, J.:

Concededly a highly, if not indeed the most likely, controversial provision introduced by the Family Code is Article 36 (as amended by E.O. No. 227 dated 17 July 1987), which declares:

“Article 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 present petition for review on certiorari, at the instance of Leouel Santos ("Leouel"), brings into fore the above provision which is now invoked by him. Undaunted by the decisions of the court a quo [1] and the Court of Appeals, [2] Leouel persists in beseeching its application in his attempt to have his marriage with herein private respondent, Julia Rosario Bedia-Santos ("Julia"), declared a nullity.

It was in Iloilo City where Leouel, who then held the rank of First Lieutenant in the Philippine Army, first met Julia. The meeting later proved to be an eventful day for Leouel and Julia. On 20 September 1986, the two exchanged vows before Municipal Trial Court Judge Cornelio G. Lazaro of Iloilo City, followed, shortly thereafter, by a church wedding. Leouel and Julia lived with the latter's parents at the J. Bedia Compound, La Paz, Iloilo City. On 18 July 1987, Julia gave birth to a baby boy, and he was christened Leouel Santos, Jr. The ecstasy, however, did not last long. It was bound to happen, Leouel averred, because of the frequent interference by Julia's parents into the young spouses' family affairs. Occasionally, the couple would also start a "quarrel" over a number of other things, like when and where the couple should start living independently from Julia's parents or whenever Julia would express resentment on Leouel's spending a few days with his own parents.

On 18 May 1988, Julia finally left for the United States of America to work as a nurse despite Leouel's pleas to so dissuade her. Seven months after her departure, or on 01 January 1989, Julia called up Leouel for the first time by long distance telephone. She promised to return home upon the expiration of her contract in July 1989. She never did. When Leouel got a chance to visit the United States, where he underwent a training program under the auspices of the Armed Forces of the Philippines from 10 April up to 25 August 1990, he desperately tried to locate, or to somehow get in touch with, Julia but all his efforts were of no avail.

Having failed to get Julia to somehow come home, Leouel filed with the Regional Trial Court of Negros Oriental, Branch 30, a complaint for "Voiding of Marriage Under Article 36 of the Family Code" (docketed, Civil Case No. 9814). Summons was served by publication in a newspaper of general circulation in Negros Oriental.

On 31 May 1991, respondent Julia, in her answer (through counsel), opposed the complaint and denied its allegations, claiming, in main, that it was the petitioner who had, in fact, been irresponsible and incompetent.

A possible collusion between the parties to obtain a decree of nullity of their marriage was ruled out by the Office of the Provincial Prosecutor (in its report to the court).

On 25 October 1991, after pre-trial conferences had repeatedly been set, albeit unsuccessfully, by the court, Julia ultimately filed a manifestation, stating that she would neither appear nor submit evidence.

On 06 November 1991, the court a quo finally dismissed the complaint for lack of merit. [3]

Leouel appealed to the Court of Appeals. The latter affirmed the decision of the trial court. [4]

The petition should be denied not only because of its non-compliance with Circular 28-91, which requires a certification of non-forum shopping, but also for its lack of merit.

Leouel argues that the failure of Julia to return home, or at the very least to communicate with him, for more than five years are circumstances that clearly show her being psychologically incapacitated to enter into married life. In his own words, Leouel asserts:

"x x x (T)here is no love, there is no affection for (him) because respondent Julia Rosario Bedia-Santos failed all these years to communicate with the petitioner. A wife who does not care to inform her husband about her whereabouts for a period of five years, more or less, is psychologically incapacitated to comply with the essential marital obligations of marriage. Respondent Julia Rosario Bedia-Santos is one such wife."

The Family Code did not define the term "psychological incapacity." The deliberations during the sessions of the Family Code Revision Committee, which has drafted the Code, can, however, provide an insight on the import of the provision.

"Article 35 - The following marriages shall be void from the beginning:

'xxx xxx xxx.

'Article 36 - x x x

'(7) Those marriages contracted by any party who, at the time of the celebration, was wanting in the sufficient use of reason or judgment 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.'

"On subparagraph (7), which as lifted from the Canon Law, Justice (Jose B.L.) Reyes suggested that they say 'wanting in sufficient use' instead of 'wanting in the sufficient use,' but Justice (Eduardo) Caguioa preferred to say 'wanting in the sufficient use.' On the other hand, Justice Reyes proposed that they say 'wanting in sufficient reason.' Justice Caguioa, however, pointed out that the idea is that one is not lacking in judgment but that he is lacking in the exercise of judgment. He added that lack of judgment would make the marriage voidable. Judge (Alicia Sempio) Diy remarked that lack of judgment is more serious than insufficient use of judgment and yet the latter would make the marriage null and void and the former only voidable. Justice Caguioa suggested that subparagraph (7) be modified to read:

"That contracted by any party who, at the time of the celebration, was psychologically or mentally incapacitated to discharge the essential marital obligations, even if such lack or incapacity is made manifest after the celebration.'

"Justice Caguioa explained that the phrase 'was wanting in sufficient use of reason or judgment to understand the essential nature of marriage' refers to defects in the mental faculties vitiating consent, which is not the idea in subparagraph (7), but lack of appreciation of one's marital obligations.

"Judge Diy raised the question: Since 'insanity' is also a psychological or mental incapacity, why is 'insanity'

only a ground for annulment and not for declaration of nullity? In reply, Justice Caguioa explained that in insanity, there is the appearance of consent, which is the reason why it is a ground for voidable marriages, while subparagraph (7) does not refer to consent but to the very essence of marital obligations.

"Prof. (Araceli) Baviera suggested that, in subparagraph (7), the word 'mentally' be deleted, with which Justice Caguioa concurred. Judge Diy, however, preferred to retain the word 'mentally.'

"Justice Caguioa remarked that subparagraph (7) refers to psychological impotence. Justice (Ricardo) Puno stated that sometimes a person may be psychologically impotent with one but not with another. Justice (Leonor Ines-) Luciano said that it is called selective impotency.

"Dean (Fortunato) Gupit stated that the confusion lies in the fact that in inserting the Canon Law annulment in the Family Code, the Committee used a language which describes a ground for voidable marriages under the Civil Code. Justice Caguioa added that in Canon Law, there are no voidable marriages. Dean Gupit said that this is precisely the reason why they should make a distinction.

"Justice Puno remarked that in Canon Law, the defects in marriage cannot be cured.

"Justice Reyes pointed out that the problem is: Why is 'insanity' a ground for voidable marriage, while 'psychological or mental incapacity' is a ground for void ab initio marriages? In reply, Justice Caguioa explained that insanity is curable and there are lucid intervals, while psychological incapacity is not.

"On another point, Justice Puno suggested that the phrase 'even if such lack or incapacity is made manifest' be modified to read 'even if such lack or incapacity becomes manifest.'

"Justice Reyes remarked that in insanity, at the time of the marriage, it is not apparent.

"Justice Caguioa stated that there are two interpretations of the phrase 'psychologically or mentally incapacitated' -- in the first one, there is vitiation of consent because one does not know all the consequences of the marriages, and if he had known these completely, he might not have consented to the marriage.

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"Prof. Bautista stated that he is in favor of making psychological incapacity a ground for voidable marriages since otherwise it will encourage one who really understood the consequences of marriage to claim that he did not and to make excuses for invalidating the marriage by acting as if he did not understand the obligations of marriage. Dean Gupit added that it is a loose way of providing for divorce.

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"Justice Caguioa explained that his point is that in the case of incapacity by reason of defects in the mental faculties, which is less than insanity, there is a defect in consent and, therefore, 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. He emphasized that psychological incapacity does not refer to mental faculties and has nothing to do with consent; it refers to obligations attendant to marriage.

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"On psychological incapacity, Prof. (Florida Ruth P.) Romero inquired if they do not consider it as going to the very essence of consent. She asked if they are really removing it from consent. In reply, Justice Caguioa explained that, ultimately, consent in general is affected but he stressed that his point is that it is not principally a vitiation of consent since there is a valid consent. He objected to the lumping together of the validity of the marriage celebration and the obligations attendant to marriage, which are completely different from each other, because they require a different capacity, which is eighteen years of age, for marriage but in contract, it is

different. Justice Puno, however, felt that psychological incapacity is still a kind of vice of consent and that it should not be classified as a voidable marriage which is incapable of convalidation; it should be convalidated but there should be no prescription. In other words, as long as the defect has not been cured, there is always a right to annul the marriage and if the defect has been really cured, it should be a defense in the action for annulment so that when the action for annulment is instituted, the issue can be raised that actually, although one might have been psychologically incapacitated, at the time the action is brought, it is no longer true that he has no concept of the consequence of marriage.

"Prof. (Esteban) Bautista raised the question: Will not cohabitation be a defense? In response, Justice Puno stated that even the bearing of children and cohabitation should not be a sign that psychological incapacity has been cured.

"Prof. Romero opined that psychological incapacity is still insanity of a lesser degree. Justice Luciano suggested that they invite a psychiatrist, who is the expert on this matter. Justice Caguioa, however, reiterated that psychological incapacity is not a defect in the mind but in the understanding of the consequences of marriage, and therefore, a psychiatrist will not be a help.

"Prof. Bautista stated that, in the same manner that there is a lucid interval in insanity, there are also momentary periods when there is an understanding of the consequences of marriage. Justice Reyes and Dean Gupit remarked that the ground of psychological incapacity will not apply if the marriage was contracted at the time when there is understanding of the consequences of marriage. [5]

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"Judge Diy proposed that they include physical incapacity to copulate among the grounds for void marriages. Justice Reyes commented that in some instances the impotence is only temporary and only with respect to a particular person. Judge Diy stated that they can specify that it is incurable. Justice Caguioa remarked that the term 'incurable' has a different meaning in law and in medicine. Judge Diy stated that 'psychological incapacity' can also be cured. Justice Caguioa, however, pointed out that 'psychological incapacity' is incurable.

"Justice Puno observed that under the present draft provision, it is enough to show that at the time of the celebration of the marriage, one was psychologically incapacitated so that later on if already he can comply with the essential marital obligations, the marriage is still void ab initio. Justice Caguioa explained that since in divorce, the psychological incapacity may occur after the marriage, in void marriages, it has to be at the time of the celebration of marriage. He, however, stressed that the idea in the provision is that at the time of the celebration of the marriage, one is psychologically incapacitated to comply with the essential marital obligations, which incapacity continues and later becomes manifest.

"Justice Puno and Judge Diy, however, pointed out that it is possible that after the marriage, one's psychological incapacity becomes manifest but later on he is cured. Justice Reyes and Justice Caguioa opined that the remedy in this case is to allow him to remarry. [6]

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"Justice Puno formulated the next Article as follows:

“'Article 37. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated, to comply with the essential obligations of marriage shall likewise be void from the beginning even if such incapacity becomes manifest after its solemnization.'"

"Justice Caguioa suggested that 'even if' be substituted with 'although.' On the other hand, Prof. Bautista proposed that the clause 'although such incapacity becomes manifest after its solemnization' be deleted since it may encourage one to create the manifestation of psychological incapacity. Justice Caguioa pointed out that, as

in other provisions, they cannot argue on the basis of abuse.

"Judge Diy suggested that they also include mental and physical incapacities, which are lesser in degree than psychological incapacity. Justice Caguioa explained that mental and physical incapacities are vices of consent while psychological incapacity is not a species of vice of consent.

"Dean Gupit read what Bishop Cruz said on the matter in the minutes of their February 9, 1984 meeting:

"'On the third ground, Bishop Cruz indicated that the phrase 'psychological or mental impotence' is an invention of some churchmen who are moralists but not canonists, 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 Caguioa remarked that they deleted the word 'mental' precisely to distinguish it from vice of consent. He explained that 'psychological incapacity' refers to lack of understanding of the essential obligations of marriage.

"Justice Puno reminded the members that, at the last meeting, they have decided not to go into the classification of 'psychological incapacity' because there was a lot of debate on it and that this is precisely the reason why they classified it as a special case.

"At this point, Justice Puno remarked that, since there have been annulments of marriages arising from psychological incapacity, Civil Law should not reconcile with Canon Law because it is a new ground even under Canon Law.

"Prof. Romero raised the question: With this common provision in Civil Law and in Canon Law, are they going to have a provision in the Family Code to the effect that marriages annulled or declared void by the church on the ground of psychological incapacity is automatically annulled in Civil Law? The other members replied negatively.

"Justice Puno and Prof. Romero inquired if Article 37 should be retroactive or prospective in application.

"Judge Diy opined that she was for its retroactivity because it is their answer to the problem of church annulments of marriages, which are still valid under the Civil Law. On the other hand, Justice Reyes and Justice Puno were concerned about the avalanche of cases.

"Dean Gupit suggested that they put the issue to a vote, which the Committee approved.

"The members voted as follows:

"(1) Justice Reyes, Justice Puno and Prof. Romero were for prospectivity.

"(2) Justice Caguioa, Judge Diy, Dean Gupit, Prof. Bautista and Director Eufemio were for retroactivity.

"(3) Prof. Baviera abstained.

"Justice Caguioa suggested that they put in the prescriptive period of ten years within which the action for declaration of nullity of the marriage should be filed in court. The Committee approved the suggestion. [7]

It could well be that, in sum, the Family Code Revision Committee in ultimately deciding to adopt the provision with less specificity than expected, has, in fact, so designed the law as to allow some resiliency in its application. Mme. Justice Alicia V. Sempio-Diy, a member of the Code Committee, has been quoted by Mr. Justice Josue N. Bellosillo in *Salita vs. Hon. Magtolis* (G.R. No. 106429, 13 June 1994); thus: [8]

"The Committee did not give any examples of psychological incapacity for fear that the giving of examples would limit the applicability of the provision under the principle of *ejusdem generis*. Rather, the 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 decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law.

A part of the provision is similar to Canon 1095 of the New Code of Canon Law, [9] which reads:

"Canon 1095. They are incapable of contracting marriage:

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."
- (Underscoring supplied.)

Accordingly, although neither decisive nor even perhaps all that persuasive for having no juridical or secular effect, the jurisprudence under Canon Law prevailing at the time of the code's enactment, nevertheless, cannot be dismissed as impertinent for its value as an aid, at least, to the interpretation or construction of the codal provision.

One author, Ladislav Orsy, S.J., in his treatise, [10] giving an account on how the third paragraph of Canon 1095 has been framed, states:

"The history of the drafting of this canon does not leave any doubt that the legislator intended, indeed, to broaden the rule. A strict and narrow norm was proposed first:

"Those who cannot assume the essential obligations of marriage because of a grave psycho-sexual anomaly (ob gravem anomaliam psychosexualem) are unable to contract marriage (cf. SCH/ 1975, canon 297, a new canon, novus);

then a broader one followed:

'...because of a grave psychological anomaly (ob gravem anomaliam psychicam)...' (cf. SCH/ 1980, canon 1049);

then the same wording was retained in the text submitted to the pope (cf. SCH/ 1982, canon 1095, 3);

finally, a new version was promulgated:

'because of causes of a psychological nature (ob causas naturae psychiae)'.

"So the progress was from psycho-sexual to psychological anomaly, then the term anomaly was altogether eliminated. It would be, however, incorrect to draw the conclusion that the cause of the incapacity need not be some kind of psychological disorder; after all, normal and healthy person should be able to assume the ordinary obligations of marriage."

Fr. Orsy concedes that the term "psychological incapacity" defies any precise definition since psychological causes can be of an infinite variety.

In a book, entitled "Canons and Commentaries on Marriage," written by Ignatius Gramunt, Javier Hervada and LeRoy Wauck, the following explanation appears:

"This incapacity consists of the following: (a) a true inability to commit oneself to the essentials of marriage. Some psychosexual disorders and other disorders of personality can be the psychic cause of this defect, which is here described in legal terms. This particular type of incapacity consists of a real inability to render what is

due by the contract. This could be compared to the incapacity of a farmer to enter a binding contract to deliver the crops which he cannot possibly reap; (b) this inability to commit oneself must refer to the essential obligations of marriage: the conjugal act, the community of life and love, the rendering of mutual help, the procreation and education of offspring; (c) the inability must be tantamount to a psychological abnormality. The mere difficulty of assuming these obligations, which could be overcome by normal effort, obviously does not constitute incapacity. The canon contemplates a true psychological disorder which incapacitates a person from giving what is due (cf. John Paul II, Address to R. Rota, Feb. 5, 1987). However, if the marriage is to be declared invalid under this incapacity, it must be proved not only that the person is afflicted by a psychological defect, but that the defect did in fact deprive the person, at the moment of giving consent, of the ability to assume the essential duties of marriage and consequently of the possibility of being bound by these duties."

Justice Sempio-Diy [11] cites with approval the work of Dr. Gerardo Veloso, a former Presiding Judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila (Branch I), who opines that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

It should be obvious, looking at all the foregoing disquisitions, including, and most importantly, the deliberations of the Family Code Revision Committee itself, that the 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 (cited in Fr. Artemio Baluma's "Void and Voidable Marriages in the Family Code and their Parallels in Canon Law," quoting from the Diagnostic Statistical Manual of Mental Disorder by the American Psychiatric Association; Edward Hudson's "Handbook II for Marriage Nullity Cases"). 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 discharged by the parties to the marriage which, as so expressed by Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intentment 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. These 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.

Until further statutory and jurisprudential parameters are established, every circumstance that may have some bearing on the degree, extent, and other conditions of that incapacity must, in every case, be carefully examined

and evaluated so that no precipitate and indiscriminate nullity is peremptorily decreed. The well-considered opinions of psychiatrists, psychologists, and persons with expertise in psychological disciplines might be helpful or even desirable.

Marriage is not just an adventure but a lifetime commitment. We should continue to be reminded that innate in our society, then enshrined in our Civil Code, and even now still indelible in Article 1 of the Family Code, is that

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"Article 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." (Underscoring supplied.)

Our Constitution is no less emphatic:

"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." (Article XV, 1987 Constitution).

The above provisions express so well and so distinctly the basic nucleus of our laws on marriage and the family, and they are no doubt the tenets we still hold on to.

The factual settings in the case at bench, in no measure at all, can come close to the standards required to decree a nullity of marriage. Undeniably and understandably, Leouel stands aggrieved, even desperate, in his present situation. Regrettably, neither law nor society itself can always provide all the specific answers to every individual problem.

WHEREFORE, the petition is DENIED. SO ORDERED.

Narvasa, C.J., Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quaison, Puno, Kapunan, and Mendoza, JJ., concur. Padilla, J., dissenting opinion. Feliciano, J., on leave.

[1] Per Judge Enrique Garrovillo.

[2] Penned by Justice Jainal Rasul, concurred in by Justices Pedro Ramirez and Ramon Mabutas, Jr.

[3] Rollo, 37-42.

[4] Rollo, 13-18.

[5] Deliberations of the Family Code Revision Committee, July 26, 1986.

[6] Deliberations of the Family Code Revision Committee, August 2, 1986.

[7] Deliberations of the Family Code Revision Committee, August 9, 1986.

[8] In her "Handbook on the Family Code."

[9] Marriage in Canon Law, Delaware: Michael Glazier, Inc., 1986, 129-130; C 109

Sunt incapaces matrimonii contrahendi:

1. qui sufficiente rationis usu carent;
2. qui laborant gravi defectu discretionis iudicii circa iura et official matrimonialia essentialia mutuo tradenda et acceptanda;
3. qui ob causas naturae psychicae obligationes matrimonii essentialia assumere non valent.

[10] Ibid., 131-132.

[11] Handbook on the Family Code, First Edition, 1988.

SEPARATE OPINION

ROMERO, J.:

I agree that under the circumstances of the case, petitioner is not entitled to have his marriage declared a nullity on the ground of psychological incapacity of private respondent.

However, as a member of both the Family Law Revision Committee of the Integrated Bar of the Philippines and the Civil Code Revision Committee of the UP Law Center, I wish to add some observations. The letter [1] dated April 15, 1985 of then Judge Alicia V. Sempio-Diy written in behalf of the Family Law and Civil Code Revision Committee to then Assemblywoman Mercedes Cojuangco-Teodoro traced the background of the inclusion of the present Article 36 in the Family Code.

"During its early meetings, the Family Law Committee had thought of including a chapter on absolute divorce in the draft of a new Family Code (Book I of the Civil Code) that it had been tasked by the IBP and the UP Law Center to prepare. In fact, some members of the Committee were in favor of a no-fault divorce between the spouses after a number of years of separation, legal or de-facto. Justice J.B.L. Reyes was then requested to prepare a proposal for an action for dissolution of marriage and the effects thereof based on two grounds: (a) five continuous years of separation between the spouses, with or without a judicial decree of legal separation, and (b) whenever a married person would have obtained a decree of absolute divorce in another country. Actually, such a proposal is one for absolute divorce but called by another name. Later, even the Civil Code Revision Committee took time to discuss the proposal of Justice Reyes on this matter.

Subsequently, however, when the Civil Code Revision Committee and Family Law Committee started holding joint meetings on the preparation of the draft of the New Family Code, they agreed and formulated the definition of marriage as -

‘a special contract of permanent partnership between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is 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 law.’

With the above definition, and considering the Christian traditional concept of marriage of the Filipino people as a permanent, inviolable, indissoluble social institution upon which the family and society are founded, and also realizing the strong opposition that any provision on absolute divorce would encounter from the Catholic Church and the Catholic sector of our citizenry to whom the great majority of our people belong, the two Committees in their joint meetings did not pursue the idea of absolute divorce and instead opted for an action for judicial declaration of invalidity of marriage based on grounds available in the Canon law. It was thought that such an action would not only be an acceptable alternative to divorce but would also solve the nagging problem of church

annulments of marriages on grounds not recognized by the civil law of the State. Justice Reyes was thus requested to again prepare a draft of provisions on such action for declaration of invalidity of marriage. Still later, to avoid the overlapping of provisions on void marriages as found in the present Civil Code and those proposed by Justice Reyes on judicial declaration of invalidity of marriage on grounds similar to the Canon law, the two Committees now working as a Joint Committee in the preparation of a New Family Code decided to consolidate the present provisions on void marriages with the proposals of Justice Reyes. The result was the inclusion of an additional kind of void marriage in the enumeration of void marriages in the present Civil Code, to wit:

'(7) Those marriages contracted by any party who, at the time of the celebration, was wanting in the sufficient use of reason or judgment to understand the essential nature of marriage or was psychologically or mentally incapacitated to discharge the essential marital obligations, even if such lack or incapacity is made manifest after the celebration.'

as well as the following implementing provisions:

'Art. 32. The absolute nullity of a marriage may be invoked or pleaded only on the basis of a final judgment declaring the marriage void, without prejudice to the provision of Article 34.'

'Art. 33. The action or defense for the declaration of the absolute nullity of a marriage shall not prescribe.'

x x x x x x x x

It is believed that many hopelessly broken marriages in our country today may already be dissolved or annulled on the grounds proposed by the Joint Committee on declaration of nullity as well as annulment of marriages, thus rendering an absolute divorce law unnecessary. In fact, during a conference with Father Gerald Healy of the Ateneo University as well as another meeting with Archbishop Oscar Cruz of the Archdiocese of Pampanga, the Joint Committee was informed that since Vatican II, the Catholic Church has been declaring marriages null and void on the ground of 'lack of due discretion' for causes that, in other jurisdictions, would be clear grounds for divorce, like teen-age or premature marriages; marriage to a man who, because of some personality disorder or disturbance, cannot support a family; the foolish or ridiculous choice of a spouse by an otherwise perfectly normal person; marriage to a woman who refuses to cohabit with her husband or who refuses to have children. Bishop Cruz also informed the Committee that they have found out in tribunal work that a lot of machismo among husbands are manifestations of their sociopathic personality anomaly, like inflicting physical violence upon their wives, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly. x x x. (Underscoring supplied)

Clearly, by incorporating what is now Article 36 into the Family Code, the Revision Committee referred to above intended to add another ground to those already listed in the Civil Code as grounds for nullifying a marriage, thus expanding or liberalizing the same. Inherent in the inclusion of the provision on psychological incapacity was the understanding that every petition for declaration of nullity based on it should be treated on a case-to-case basis; hence, the absence of a definition and an enumeration of what constitutes psychological incapacity. Moreover, the Committee feared that the giving of examples would limit the applicability of the provision under the principle of ejusdem generis. But the law requires that the same be existing at the time of marriage although it be manifested later.

Admittedly, the provision on psychological incapacity, just like any other provision of law, is open to abuse. To prevent this, "the court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed." [2]

Moreover, the judge, in interpreting the provision on a case-to-case basis, must be guided by "experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law." [3]

The constitutional and statutory provisions on the family [4] will remain the lodestar which our society will hope to achieve ultimately. Therefore, the inclusion of Article 36 is not to be taken as an abandonment of the ideal which we all cherish. If at all, it is a recognition of the reality that some marriages, by reason of the incapacity of one of the contracting parties, fall short of this ideal; thus, the parties are constrained to find a way of putting an end to their union through some legally-accepted means.

Any criticism directed at the way that judges have interpreted the provision since its enactment as to render it easier for unhappily-married couples to separate is addressed, not to the wisdom of the lawmakers but to the manner by which some members of the Bench have implemented the provision. These are not interchangeable, each being separate and distinct from the other.

[1] Written pursuant to the request of Assemblywoman Mercedes Cojuangco-Teodoro during the March 23, 1985 joint meeting of the Family Law and Civil Code Revision Committees at the UP Law Center for comments on P.B. 3149 (Pacificador Bill) on Divorce, P.B. No. 1086 (Monfort and Collantes Bill) on Recognition of Church Annulments of Marriages, P.B. No. 2347 (Sitoy Bill) on Additional Grounds for Annulment of Marriage and Legal Separation and P.B. No. 1350 (Kalaw Bill) on Equal Rights of Filipino Women which were pending before her Sub-Committee.

[2] FAMILY CODE, Art. 48.

[3] J. A. V. SEMPIO-DIY, HANDBOOK OF THE FAMILY CODE OF THE PHILIPPINES, 37 (1988).

[4] As quoted in the majority opinion.

DISSENTING OPINION

PADILLA, J.:

It is difficult to dissent from a well-written and studied opinion as Mr. Justice Vitug's ponencia. But, after an extended reflection on the facts of this case, I cannot see my way clear into holding, as the majority do, that there is no ground for the declaration of nullity of the marriage between petitioner and private respondent.

To my mind, it is clear that private respondent has been shown to be psychologically incapacitated to comply with at least one essential marital obligation, i.e. that of living and cohabiting with her husband, herein petitioner. On the other hand, it has not been shown that petitioner does not deserve to live and cohabit with his wife, herein private respondent.

There appears to be no disagreement that the term "psychological incapacity" defies precision in definition. But, as used in Article 36 of the Family Code as a ground for the declaration of nullity of a marriage, the intent of the framers of the Code is evidently to expand and liberalize the grounds for nullifying a marriage, as well pointed out by Madam Justice Florida Ruth P. Romero in her separate opinion in this case.

While it is true that the broad term "psychological incapacity" can open the doors to abuse by couples who may wish to have an easy way out of their marriage, there are, however, enough safeguards against this contingency,

among which, is the intervention by the State, through the public prosecutor, to guard against collusion between the parties and/or fabrication of evidence.

In the case at bench, it has been abundantly established that private respondent Julia Rosario Bedia-Santos exhibits specific behavior which, to my mind, shows that she is psychologically incapacitated to fulfill her essential marital obligations, to wit:

- a. It took her seven (7) months after she left for the United States to call up her husband.
- b. Julia promised to return home after her job contract expired in July 1989, but she never did and neither is there any showing that she informed her husband (herein petitioner) of her whereabouts in the U.S.A.
- c. When petitioner went to the United States on a mission for the Philippine Army, he exerted efforts to "touch base" with Julia; there were no similar efforts on the part of Julia to do the same.
- d. When petitioner filed this suit, more than five (5) years had elapsed, without Julia indicating her plans to rejoin the petitioner or her whereabouts.
- e. When petitioner filed this case in the trial court, Julia, in her answer, claimed that it is the former who has been irresponsible and incompetent.
- f. During the trial, Julia waived her right to appear and submit evidence.

A spouse's obligation to live and cohabit with his/her partner in marriage is a basic ground rule in marriage, unless there are overpowering compelling reasons such as, for instance, an incurable contagious disease on the part of a spouse or cruelty of one partner, bordering on insanity. There may also be instances when, for economic and practical reasons, husband and wife have to live separately, but the marital bond between the spouses always remains. Mutual love and respect for each other would, in such cases, compel the absent spouse to at least have regular contacts with the other to inform the latter of his/her condition and whereabouts.

In the present case, it is apparent that private respondent Julia Rosario Bedia-Santos has no intention of cohabiting with petitioner, her husband, or maintaining contact with him. In fact, her acts eloquently show that she does not want her husband to know of her whereabouts and neither has she any intention of living and cohabiting with him.

To me there appears to be, on the part of private respondent, an unmistakable indication of psychological incapacity to comply with her essential marital obligations, although these indications were made manifest after the celebration of the marriage.

It would be a great injustice, I believe, to petitioner for this Court to give a much too restrictive interpretation of the law and compel the petitioner to continue to be married to a wife who for purposes of fulfilling her marital duties has, for all practical purposes, ceased to exist.

Besides, there are public policy considerations involved in the ruling the Court makes today. Is it not, in effect, directly or indirectly, facilitating the transformation of petitioner into a "habitual tryster" or one forced to maintain illicit relations with another woman or women with emerging problems of illegitimate children, simply because he is denied by private respondent, his wife, the companionship and conjugal love which he has sought from her and to which he is legally entitled?

I do not go as far as to suggest that Art. 36 of the Family Code is a sanction for absolute divorce but I submit that we should not constrict it to non-recognition of its evident purpose and thus deny to one like petitioner, an opportunity to turn a new leaf in his life by declaring his marriage a nullity by reason of his wife's psychological incapacity to perform an essential marital obligation.

I therefore vote to GRANT the petition and to DECLARE the marriage between petitioner Leouel Santos and private respondent Julia Rosario Bedia-Santos VOID on the basis of Article 36 of the Family Code.

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