

CHI MING TSOI, PETITIONER, VS. COURT OF APPEALS AND GINA LAO-TSOI, RESPONDENTS.

G.R. No. 119190. January 16, 1997

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

Man has not invented a reliable compass by which to steer a marriage in its journey over troubled waters. Laws are seemingly inadequate. Over time, much reliance has been placed in the works of the unseen hand of Him who created all things.

Who is to blame when a marriage fails?

This case was originally commenced by a distraught wife against her uncaring husband in the Regional Trial Court of Quezon City (Branch 89) which decreed the annulment of the marriage on the ground of psychological incapacity. Petitioner appealed the decision of the trial court to respondent Court of Appeals (CA-G.R. CV No. 42758) which affirmed the Trial Court's decision on November 29, 1994 and correspondingly denied the motion for reconsideration in a resolution dated February 14, 1995.

The statement of the case and of the facts made by the trial court and reproduced by the Court of Appeals[1] in its decision are as follows:

"From the evidence adduced, the following facts were preponderantly established:

"Sometime on May 22, 1988, the plaintiff married the defendant at the Manila Cathedral, xxx Intramuros Manila, as evidenced by their Marriage Contract. (Exh. "A")

"After the celebration of their marriage and wedding reception at the South Villa, Makati, they went and proceeded to the house of defendant's mother.

"There, they slept together on the same bed in the same room for the first night of their married life.

"It is the version of the plaintiff, that contrary to her expectations, that as newlyweds they were supposed to enjoy making love, or having sexual intercourse, with each other, the defendant just went to bed, slept on one side thereof, then turned his back and went to sleep. There was no sexual intercourse between them during the first night. The same thing happened on the second, third and fourth nights.

"In an effort to have their honeymoon in a private place where they can enjoy together during their first week as husband and wife, they went to Baguio City. But, they did so together with her mother, an uncle, his mother and his nephew. They were all invited by the defendant to join them. [T]hey stayed in Baguio City for four (4) days. But, during this period, there was no sexual intercourse between them, since the defendant avoided her by taking a long walk during siesta time or by just sleeping on a rocking chair located at the living room. They slept together in the same room and on the same bed since May 22, 1988 until March 15, 1989. But during this period, there was no attempt of sexual intercourse between them. [S]he claims, that she did not even see her husband's private parts nor did he see hers.

"Because of this, they submitted themselves for medical examinations to Dr. Eufemio Macalalag, a urologist at the Chinese General Hospital, on January 20, 1989.

"The results of their physical examinations were that she is healthy, normal and still a virgin, while that of her husband's examination was kept confidential up to this time. While no medicine was prescribed for her, the doctor prescribed medications for her husband which was also kept confidential. No treatment was given to her. For her husband, he was asked by the doctor to return but he never did.

"The plaintiff claims, that the defendant is impotent, a closet homosexual as he did not show his penis. She said, that she had observed the defendant using an eyebrow pencil and sometimes the cleansing cream of his mother. And that, according to her, the defendant married her, a Filipino citizen, to acquire or maintain his residency status here in the country and to publicly maintain the appearance of a normal man.

"The plaintiff is not willing to reconcile with her husband.

"On the other hand, it is the claim of the defendant that if their marriage shall be annulled by reason of psychological incapacity, the fault lies with his wife.

"But, he said that he does not want his marriage with his wife annulled for several reasons, viz: (1) that he loves her very much; (2) that he has no defect on his part and he is physically and psychologically capable; and, (3) since the relationship is still very young and if there is any differences between the two of them, it can still be reconciled and that, according to him, if either one of them has some incapacities, there is no certainty that this will not be cured. He further claims, that if there is any defect, it can be cured by the intervention of medical technology or scienceK

"The defendant admitted that since their marriage on May 22, 1988, until their separation on March 15, 1989, there was no sexual contact between them. But, the reason for this, according to the defendant, was that everytime he wants to have sexual intercourse with his wife, she always avoided him and whenever he caresses her private parts, she always removed his hands. The defendant claims, that he forced his wife to have sex with him only once but he did not continue because she was shaking and she did not like it. So he stopped.

"There are two (2) reasons, according to the defendant, why the plaintiff filed this case against him, and these are: (1) that she is afraid that she will be forced to return the pieces of jewelry of his mother, and, (2) that her husband, the defendant, will consummate their marriage.

"The defendant insisted that their marriage will remain valid because they are still very young and there is still a chance to overcome their differences.

"The defendant submitted himself to a physical examination. His penis was examined by Dr. Sergio Alteza, Jr., for the purpose of finding out whether he is impotent. As a result thereof, Dr. Alteza submitted his Doctor's Medical Report. (Exh. "2"). It is stated there, that there is no evidence of impotency (Exh. "2-B"), and he is capable of erection. (Exh. "2-C")

"The doctor said, that he asked the defendant to masturbate to find out whether or not he has an erection and he found out that from the original size of two (2) inches, or five (5) centimeters, the penis of the defendant lengthened by one (1) inch and one centimeter. Dr. Alteza said, that the defendant had only a soft erection which is why his penis is not in its full length. But, still is capable of further erection, in that with his soft erection, the defendant is capable of having sexual intercourse with a woman.

"In open Court, the Trial Prosecutor manifested that there is no collusion between the parties and that the evidence is not fabricated."[2]

After trial, the court rendered judgment, the dispositive portion of which reads:

"ACCORDINGLY, judgment is hereby rendered declaring as VOID the marriage entered into by the plaintiff

with the defendant on May 22, 1988 at the Manila Cathedral, Basilica of the Immaculate Conception, Intramuros, Manila, before the Rt. Rev. Msgr. Melencio de Vera. Without costs. Let a copy of this decision be furnished the Local Civil Registrar of Quezon City. Let another copy be furnished the Local Civil Registrar of Manila.

"SO ORDERED. "

On appeal, the Court of Appeals affirmed the trial court's decision.

Hence, the instant petition.

Petitioner alleges that the respondent Court of Appeals erred:

I

in affirming the conclusions of the lower court that there was no sexual intercourse between the parties without making any findings of fact.

II

in holding that the refusal of private respondent to have sexual communion with petitioner is a psychological incapacity inasmuch as proof thereof is totally absent.

III

in holding that the alleged refusal of both the petitioner and the private respondent to have sex with each other constitutes psychological incapacity of both.

IV

in affirming the annulment of the marriage between the parties decreed by the lower court without fully satisfying itself that there was no collusion between them.

We find the petition to be bereft of merit.

Petitioner contends that being the plaintiff in Civil Case No. Q-89-3141, private respondent has the burden of proving the allegations in her complaint; that since there was no independent evidence to prove the alleged non-coitus between the parties, there remains no other basis for the court's conclusion except the admission of petitioner; that public policy should aid acts intended to validate marriage and should retard acts intended to invalidate them; that the conclusion drawn by the trial court on the admissions and confessions of the parties in their pleadings and in the course of the trial is misplaced since it could have been a product of collusion; and that in actions for annulment of marriage, the material facts alleged in the complaint shall always be proved.[3]

Section 1, Rule 19 of the Rules of Court reads:

"Section 1. Judgment on the pleadings. - Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. But in actions for annulment of marriage or for legal separation the material facts alleged in the complaint shall always be proved."

The foregoing provision pertains to a judgment on the pleadings. What said provision seeks to prevent is annulment of marriage without trial. The assailed decision was not based on such a judgment on the pleadings. When private respondent testified under oath before the trial court and was cross-examined by oath before the trial court and was cross-examined by the adverse party, she thereby presented evidence in the form of a testimony. After such evidence was presented, it became incumbent upon petitioner to present his side. He

admitted that since their marriage on May 22, 1988, until their separation on March 15, 1989, there was no sexual intercourse between them.

To prevent collusion between the parties is the reason why, as stated by the petitioner, the Civil Code provides that no judgment annulling a marriage shall be promulgated upon a stipulation of facts or by confession of judgment (Arts. 88 and 101[par. 2]) and the Rules of Court prohibit such annulment without trial (Sec. 1, Rule 19).

The case has reached this Court because petitioner does not want their marriage to be annulled. This only shows that there is no collusion between the parties. When petitioner admitted that he and his wife (private respondent) have never had sexual contact with each other, he must have been only telling the truth. We are reproducing the relevant portion of the challenged resolution denying petitioner's Motion for Reconsideration, penned with magisterial lucidity by Associate Justice Minerva Gonzaga-Reyes, viz:

"The judgment of the trial court which was affirmed by this Court is not based on a stipulation of facts. The issue of whether or not the appellant is psychologically incapacitated to discharge a basic marital obligation was resolved upon a review of both the documentary and testimonial evidence on record. Appellant admitted that he did not have sexual relations with his wife after almost ten months of cohabitation, and it appears that he is not suffering from any physical disability. Such abnormal reluctance or unwillingness to consummate his marriage is strongly indicative of a serious personality disorder which to the mind of this Court clearly demonstrates an 'utter insensitivity or inability to give meaning and significance to the marriage' within the meaning of Article 36 of the Family Code (See Santos vs. Court of Appeals, G.R. No. 112019, January 4, 1995)."[4]

Petitioner further contends that respondent court erred in holding that the alleged refusal of both the petitioner and the private respondent to have sex with each other constitutes psychological incapacity of both. He points out as error the failure of the trial court to make "a categorical finding about the alleged psychological incapacity and an in-depth analysis of the reasons for such refusal which may not be necessarily due to psychological disorders" because there might have been other reasons, - i.e., physical disorders, such as aches, pains or other discomforts, - why private respondent would not want to have sexual intercourse from May 22, 1988 to March 15, 1989, in a short span of 10 months.

First, it must be stated that neither the trial court nor the respondent court made a finding on who between petitioner and private respondent refuses to have sexual contact with the other. The fact remains, however, that there has never been coitus between them. At any rate, since the action to declare the marriage void may be filed by either party, i.e., even the psychologically incapacitated, the question of who refuses to have sex with the other becomes immaterial.

Petitioner claims that there is no independent evidence on record to show that any of the parties is suffering from psychological incapacity. Petitioner also claims that he wanted to have sex with private respondent; that the reason for private respondent's refusal may not be psychological but physical disorder as stated above.

We do not agree. Assuming it to be so, petitioner could have discussed with private respondent or asked her what is ailing her, and why she balks and avoids him everytime he wanted to have sexual intercourse with her. He never did. At least, there is nothing in the record to show that he had tried to find out or discover what the problem with his wife could be. What he presented in evidence is his doctor's Medical Report that there is no evidence of his impotency and he is capable of erection.[5] Since it is petitioner's claim that the reason is not psychological but perhaps physical disorder on the part of private respondent, it became incumbent upon him to prove such a claim.

"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.”[6]

Evidently, one of the essential marital obligations under the Family Code is "To procreate children based on the universal principle that procreation of children through sexual cooperation is the basic end of marriage." Constant non-fulfillment of this obligation will finally destroy the integrity or wholeness of the marriage. In the case at bar, the senseless and protracted refusal of one of the parties to fulfill the above marital obligation is equivalent to psychological incapacity.

As aptly stated by the respondent court,

"An examination of the evidence convinces Us that the husband's plea that the wife did not want carnal intercourse with him does not inspire belief. Since he was not physically impotent, but he refrained from sexual intercourse during the entire time (from May 22, 1988 to March 15, 1989) that he occupied the same bed with his wife, purely out of sympathy for her feelings, he deserves to be doubted for not having asserted his rights even though she balked (*Tompkins vs. Tompkins*, 111 Atl. 599, cited in *I Paras*, Civil Code, at p. 330). Besides, if it were true that it is the wife who was suffering from incapacity, the fact that defendant did not go to court and seek the declaration of nullity weakens his claim. This case was instituted by the wife whose normal expectations of her marriage were frustrated by her husband's inadequacy. Considering the innate modesty of the Filipino woman, it is hard to believe that she would expose her private life to public scrutiny and fabricate testimony against her husband if it were not necessary to put her life in order and put to rest her marital status.

"We are not impressed by defendant's claim that what the evidence proved is the unwillingness or lack of intention to perform the sexual act, which is not psychological incapacity, and which can be achieved "through proper motivation." After almost ten months of cohabitation, the admission that the husband is reluctant or unwilling to perform the sexual act with his wife whom he professes to love very dearly, and who has not posed any insurmountable resistance to his alleged approaches, is indicative of a hopeless situation, and of a serious personality disorder that constitutes psychological incapacity to discharge the basic marital covenants within the contemplation of the Family Code.”[7]

While the law provides that the husband and the wife are obliged to live together, observe mutual love, respect and fidelity (Art. 68, Family Code), the sanction therefor is actually the "spontaneous, mutual affection between husband and wife and not any legal mandate or court order" (*Cuaderno vs. Cuaderno*, 120 Phil. 1298). Love is useless unless it is shared with another. Indeed, no man is an island, the cruelest act of a partner in marriage is to say "I could not have cared less." This is so because an ungiven self is an unfulfilled self. The egoist has nothing but himself. In the natural order, it is sexual intimacy which brings spouses wholeness and oneness. Sexual intimacy is a gift and a participation in the mystery of creation. It is a function which enlivens the hope of procreation and ensures the continuation of family relations.

It appears that there is absence of empathy between petitioner and private respondent. That is - a shared feeling which between husband and wife must be experienced not only by having spontaneous sexual intimacy but a deep sense of spiritual communion. Marital union is a two-way process. An expressive interest in each other's feelings at a time it is needed by the other can go a long way in deepening the marital relationship. Marriage is definitely not for children but for two consenting adults who view the relationship with love *amor gignit amorem*, respect, sacrifice and a continuing commitment to compromise, conscious of its value as a sublime social institution.

This Court, finding the gravity of the failed relationship in which the parties found themselves trapped in its mire

of unfulfilled vows and unconsummated marital obligations, can do no less but sustain the studied judgment of respondent appellate court.

IN VIEW OF THE FOREGOING PREMISES, the assailed decision of the Court of Appeals dated November 29, 1994 is hereby AFFIRMED in all respects and the petition is hereby DENIED for lack of merit.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Thirteenth Division: Minerva Gonzaga-Reyes, J., ponente, Eduardo Montenegro and Antonio P. Solano, JJ., concurring.

[2] Rollo, pp. 20-24.

[3]Ibid.

[4] Rollo, p. 34.

[5]Exhs. "2", "2-B" and "2-C".

[6] Psychological Incapacity, G.T. Veloso, p. 20, cited in The Family Code of the Philippines Annotated, Pineda, 1989 ed., p. 51.

[7] Decision, pp. 11-12; Rollo, pp. 30-31.

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