

JOEL JIMENEZ, PLAINTIFF AND APPELLEE, VS. REMEDIOS CAÑIZARES, DEFENDANT. REPUBLIC OF THE PHILIPPINES, INTERVENOR AND APPELLANT.*G.R. No. 12790. August 31, 1960*

Ponente: PADILLA, J.

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In a complaint filed on 7 June 1955 in the Court of First Instance of Zamboanga the plaintiff Joel Jimenez prays for a decree annulling his marriage to the defendant Remedios Canizares contracted on 3 August 1950 before a judge of the municipal court of Zamboanga City, upon the ground that the orifice of her genitals or vagina was too small to allow the penetration of a male organ or penis for copulation; that the condition of her genitals as described above existed at the time of marriage and continues to exist; and that for that reason he left the conjugal home two nights and one day after they had been married. On 14 June 1955 the wife was summoned and served with a copy of the complaint. She did not file an answer. On 29 September 1956, pursuant to the provisions of article 88 of the Civil Code, the Court directed the city attorney of Zamboanga to inquire whether there was a collusion between the parties and, if there was no collusion, to intervene for the State to see that the evidence for the plaintiff is not a frame-up, concocted or fabricated. On 17 December 1956 the Court entered an order requiring the defendant to submit, to a physical examination by a competent lady physician to determine her physical capacity for copulation and to submit, within ten days from receipt of the order, a medical certificate on the result thereof. On 14 March 1957 the defendant was granted additional five days from notice to comply with the order of 17 December 1956 with warning that her failure to undergo medical examination and submit the required doctor's certificate would be deemed lack of interest on her part in the case and that judgment upon the evidence presented by her husband would be rendered.

After hearing, at which the defendant was not present, on 11 April 1957 the Court entered a decree annulling the marriage between the plaintiff and the defendant. On 26 April 1957 the city attorney filed a motion for reconsideration of the decree thus entered, upon the ground, among others, that the defendant's impotency has not been satisfactorily established as required by law; that she had not been physically examined because she had refused to be so examined; that instead of annulling the marriage the Court should have punished her for contempt of court and compelled her to undergo a physical examination and submit a medical certificate; and that the decree sought to be reconsidered would open the door to married couples, who want to end their marriage to collude or connive with each other by just alleging impotency of one of them. He prayed that the complaint be dismissed or that the wife be subjected to a physical examination. Pending resolution of his motion, the city attorney timely appealed from the decree. On 13 May 1957 the motion for reconsideration was denied.

The question to determine is whether the marriage in question may be annulled on the strength only of the lone testimony of the husband who claimed and testified that his wife was and is impotent. The latter did not answer the complaint, was absent during the hearing, and refused to submit to a medical examination.

Marriage in this country is an institution in which the community is deeply interested. The state has surrounded it with safeguards to maintain its purity, continuity and permanence. The security and stability of the state are largely dependent upon it. It is the interest and duty of each and every member of the community to prevent the bringing about of a condition that would shake its foundation and ultimately lead to its destruction. The incidents of the status are governed by law, not by will of the parties. The law specifically enumerates the legal grounds, that must be proved to exist by indubitable evidence, to annul a marriage. In the case at bar, the annulment of the marriage in question was decreed upon the sole testimony of the husband who was expected to give testimony tending or aiming at securing the annulment of his marriage he sought and seeks. Whether the wife is really impotent cannot be deemed to have been satisfactorily established, because from the commencement of the proceedings until the entry of the decree she had abstained from taking part therein. Although her refusal to be examined or failure to appear in court show indifference on her part, yet from such attitude the presumption arising out of the suppression of evidence could not arise or be inferred, because women of this country are by nature coy, bashful and shy and would not submit to a physical examination unless compelled to by competent authority. This the Court may do without doing violence to and infringing upon her constitutional right. A physical examination in this case is not self-incrimination. She is not charged with any offense. She is not being compelled to be a witness against herself.[1] "Impotency being an abnormal condition should not be presumed. The presumption is in favor of potency." [2] The lone testimony of the husband that his wife is physically incapable of sexual intercourse is insufficient to tear asunder the ties that have bound them together as husband and wife.

The decree appealed from is set aside and the case remanded to the lower court for further proceedings in accordance with this decision, without pronouncement as to costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, and Dizon, JJ. concur.

Paredes, J., took no part.

[1] Section 1, paragraph 13, Article III of the Constitution.

[2] Marciano vs. San Jose, 89 Phil., 62.

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