

JOSE DE OCAMPO, PETITIONER, VS. SERAFINA FLORENCIANO, RESPONDENT.

G.R. No. 13553. February 23, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

Action for legal separation by Jose de Ocampo against his wife Serafina, on the ground of adultery. The court of first instance of Nueva Ecija dismissed it. The Court of Appeals affirmed, holding there was confession of judgment, plus condonation or consent to the adultery and prescription.

We granted certiorari to consider the application of articles 100 and 101 of the New Civil Code, which for convenience are quoted herewith:

"ART. 100.—The legal separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage. "Where both spouses are offenders, a legal separation cannot be claimed by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition."

"ART. 101.—No decree of legal separation shall be promulgated upon a stipulation of facts or by confession of judgment.

In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the plaintiff is not fabricated."

The record shows that on July 5, 1955, the complaint for legal separation was filed. As amended, it described their marriage performed in 1938, and the commission of adultery by Serafina, in March 1951 with Jose Arcalas, and in June 1955 with Nelson Orzame.

Because the defendant made no answer, the court defaulted her, and pursuant to Art. 101 above, directed the provincial fiscal to investigate whether or not collusion existed between the parties. The fiscal examined the defendant under oath, and then reported to the Court that there was no collusion. The plaintiff presented his evidence consisting of the testimony of Vicente Medina, Ernesto de Ocampo, Cesar Enriquez, Mateo Damo, Jose de Ocampo and Capt. Serafin Gubat.

According to the Court of Appeals, the evidence thus presented shows that "plaintiff and defendant were married in April 5, 1938 by a religious ceremony in Guimba, Nueva Ecija, and had lived thereafter as husband and wife. They begot several children who are now living with plaintiff. In March, 1951, plaintiff discovered on several occasions that his wife was betraying his trust by maintaining illicit relations with One Jose Arcalas. Having found the defendant carrying marital relations with another man plaintiff sent her to Manila in June 1951 to study beauty culture, where she stayed for one year. Again, plaintiff discovered that while in the said city defendant was going out with several other men, aside from Jose Arcalas. Towards the end of June, 1952, when defendant had

finished studying her course, she left plaintiff and since then they had lived separately.

"On June 18, 1955, plaintiff surprised his wife in the act of having illicit relations with another man by the name of Nelson Orzame. Plaintiff signified his intention of filing a petition for legal separation, to which defendant manifested her conformity provided she is not charged with adultery in a criminal action. Accordingly, plaintiff filled on July 5, 1955, a petition for legal separation."

The Court of Appeals held that the husband's right to legal separation on account of the defendant's adultery with Jose Arcalas had prescribed, because his action was not filed within one year from March 1951 when plaintiff discovered her infidelity. (Art. 102, New Civil Code) We must agree with the Court of Appeals on this point.[1]

As to the adultery with Nelson Orzame, the appellate court found that in the night of June 18, 1955, the husband upon discovering the illicit connection, expressed his wish to file a petition for legal separation and defendant readily agreed to such filing. And when she was questioned by the Fiscal upon orders of the court, she reiterated her conformity to the legal separation even as she admitted having had sexual relations with Nelson Orzame. Interpreting these facts virtually to mean a confession of judgment the Appellate Court declared that under Art. 101, legal separation could not be decreed.

As we understand the article, it does not exclude, as evidence, any admission or confession made by the defendant outside of the court. It merely prohibits a decree of separation upon a confession of judgment. Confession of judgment usually happens when the defendant appears in court and confesses the right of plaintiff to judgment or files a pleading expressly agreeing to the plaintiff's demand.[2] This did not occur.

Yet, even supposing that the above statement of defendant constituted practically a confession of judgment, inasmuch as there is evidence of the adultery independently of such statement, the decree may and should be granted, since it would not be based on her confession, but upon evidence presented by the plaintiff. What the law prohibits is a judgment based exclusively or mainly on defendant's confession. If a confession defeats the action ipso facto, any defendant who opposes the separation will immediately confess judgment, purposely to prevent it.

The mere circumstance that defendant told the Fiscal that she "liked also" to be legally separated from her husband, is no obstacle to the successful prosecution of the action. When she refused to answer the complaint, she indicated her willingness to be separated. Yet, the law does not order the dismissal. Allowing the proceeding to continue, it takes precautions against collusion, which implies more than consent or lack of opposition to the agreement.

Needless to say, when the court is informed that defendant equally desires the separation and admitted the commission of the offense, it should be doubly careful lest a collusion exists. (The Court of Appeals did not find collusion.)

Collusion in divorce, or legal separation means the agreement.

"* * * between husband and wife for one of them to commit, or to appear to commit, or to be (represented in court as having committed, a matrimonial offense, or to suppress evidence of a valid defense, for the purpose of enabling the other to obtain a divorce. This agreement, if not express, may be implied from the acts of the parties. It is a ground for denying the divorce." (Griffiths vs. Griffiths, 69 N. J. Eq. 689 60 Atl. 1099; Sandoz vs. Sandoz, 107 Ore. 282, 214 Pas. 590.)

In this case, there would be collusion if the parties had arranged to make it appear that a matrimonial offense had been committed although it was not, or if the parties had connived to bring about a legal separation even in the absence of grounds therefor.

Here, the offense of adultery had really taken place, according to the evidence. The defendant could not have falsely told the adulterous acts to the Fiscal, because her story might send her to jail the moment her husband requests the Fiscal to prosecute. She could not have practiced deception at such a personal risk.

In this connection, it has been held that collusion may not be inferred from the mere fact that the guilty party confesses to the offense and thus enables the other party to procure evidence necessary to prove it. (*Williams vs. Williams*, [N. Y.] 40 N. E. (2d) 1017; *Rosenweig vs. Rosenweig*, 246 N. Y. Suppl. 231; *Conyers, vs. Conyers*, 224 S. W. [2d] 688.)

And proof that the defendant desires the divorce and makes no defense, is not by itself collusion. (*Pohlman vs. Pohlman*, [N. J.] 46 Atl. Rep. 658.)

We do not think plaintiff's failure actively to search for defendant and take her home (after the latter had left him in 1952) constituted condonation or consent to her adulterous relations with Orzame. It will be remembered that she "left" him after having "sinned" with Arcalas and after he had discovered her dates with other men. Consequently, it was not his duty to search for her to bring her home. Hers was the obligation to return.

Two decisions[3] are cited wherein from apparently similar circumstances, this Court inferred the husband's consent to or condonation of his wife's misconduct. However, upon careful examination, a vital difference will be found in both instances, the husband had abandoned his wife; here it was the wife who "left" her husband.

Wherefore, finding no obstacles to the aggrieved husband's petition we hereby reverse the appealed, decision and decree a legal separation between these spouses, with all the consequent effects. Costs of all instances against Serafina Florenciano. So ordered.

Paras, C. J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] *Brown vs. Yambao*, 102 Phil., 168.

[2] Cf. *Phil. National Bank vs. Ingersoll*, 43 Phil., 444, See generally *Corpus Juris Secundum* "Judgments" sec. 134.

[3] *People vs. Sensano*, 58 Phil., 73; *People vs. Guinucud*, 58 Phil., 621.

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