

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. CRASUS L. IYOY, RESPONDENT.***G.R. NO. 152577. September 21, 2005*

Ponente: CHICO-NAZARIO, J.

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In this Petition for Review on Certiorari under Rule 45 of the Rules of Court, petitioner Republic of the Philippines, represented by the Office of the Solicitor General, prays for the reversal of the Decision of the Court of Appeals in CA-G.R. CV No. 62539, dated 30 July 2001,[1] affirming the Judgment of the Regional Trial Court (RTC) of Cebu City, Branch 22, in Civil Case No. CEB-20077, dated 30 October 1998,[2] declaring the marriage between respondent Crasus L. Iyoy and Fely Ada Rosal-Iyoy null and void on the basis of Article 36 of the Family Code of the Philippines.

The proceedings before the RTC commenced with the filing of a Complaint[3] for declaration of nullity of marriage by respondent Crasus on 25 March 1997. According to the said Complaint, respondent Crasus married Fely on 16 December 1961 at Bradford Memorial Church, Jones Avenue, Cebu City. As a result of their union, they had five children – Crasus, Jr., Daphne, Debbie, Calvert, and Carlos – who are now all of legal ages. After the celebration of their marriage, respondent Crasus discovered that Fely was "hot-tempered, a nagger and extravagant." In 1984, Fely left the Philippines for the United States of America (U.S.A.), leaving all of their five children, the youngest then being only six years old, to the care of respondent Crasus. Barely a year after Fely left for the U.S.A., respondent Crasus received a letter from her requesting that he sign the enclosed divorce papers; he disregarded the said request. Sometime in 1985, respondent Crasus learned, through the letters sent by Fely to their children, that Fely got married to an American, with whom she eventually had a child. In 1987, Fely came back to the Philippines with her American family, staying at Cebu Plaza Hotel in Cebu City. Respondent Crasus did not bother to talk to Fely because he was afraid he might not be able to bear the sorrow and the pain she had caused him. Fely returned to the Philippines several times more: in 1990, for the wedding of their eldest child, Crasus, Jr.; in 1992, for the brain operation of their fourth child, Calvert; and in 1995, for unknown reasons. Fely continued to live with her American family in New Jersey, U.S.A. She had been openly using the surname of her American husband in the Philippines and in the U.S.A. For the wedding of Crasus, Jr., Fely herself had invitations made in which she was named as "Mrs. Fely Ada Micklus." At the time the Complaint was filed, it had been 13 years since Fely left and abandoned respondent Crasus, and there was no more possibility of reconciliation between them. Respondent Crasus finally alleged in his Complaint that Fely's acts brought danger and dishonor to the family, and clearly demonstrated her psychological incapacity to perform the essential obligations of marriage. Such incapacity, being incurable and continuing, constitutes a ground for declaration of nullity of marriage under Article 36, in relation to Articles 68, 70, and 72, of the Family Code of the Philippines.

Fely filed her Answer and Counterclaim[4] with the RTC on 05 June 1997. She asserted therein that she was already an American citizen since 1988 and was now married to Stephen Micklus. While she admitted being previously married to respondent Crasus and having five children with him, Fely refuted the other allegations

made by respondent Crasus in his Complaint. She explained that she was no more hot-tempered than any normal person, and she may have been indignant at respondent Crasus on certain occasions but it was because of the latter's drunkenness, womanizing, and lack of sincere effort to find employment and to contribute to the maintenance of their household. She could not have been extravagant since the family hardly had enough money for basic needs. Indeed, Fely left for abroad for financial reasons as respondent Crasus had no job and what she was then earning as the sole breadwinner in the Philippines was insufficient to support their family. Although she left all of her children with respondent Crasus, she continued to provide financial support to them, as well as, to respondent Crasus. Subsequently, Fely was able to bring her children to the U.S.A., except for one, Calvert, who had to stay behind for medical reasons. While she did file for divorce from respondent Crasus, she denied having herself sent a letter to respondent Crasus requesting him to sign the enclosed divorce papers. After securing a divorce from respondent Crasus, Fely married her American husband and acquired American citizenship. She argued that her marriage to her American husband was legal because now being an American citizen, her status shall be governed by the law of her present nationality. Fely also pointed out that respondent Crasus himself was presently living with another woman who bore him a child. She also accused respondent Crasus of misusing the amount of P90,000.00 which she advanced to him to finance the brain operation of their son, Calvert. On the basis of the foregoing, Fely also prayed that the RTC declare her marriage to respondent Crasus null and void; and that respondent Crasus be ordered to pay to Fely the P90,000.00 she advanced to him, with interest, plus, moral and exemplary damages, attorney's fees, and litigation expenses.

After respondent Crasus and Fely had filed their respective Pre-Trial Briefs,[5] the RTC afforded both parties the opportunity to present their evidence. Petitioner Republic participated in the trial through the Provincial Prosecutor of Cebu.[6]

Respondent Crasus submitted the following pieces of evidence in support of his Complaint: (1) his own testimony on 08 September 1997, in which he essentially reiterated the allegations in his Complaint;[7] (2) the Certification, dated 13 April 1989, by the Health Department of Cebu City, on the recording of the Marriage Contract between respondent Crasus and Fely in the Register of Deeds, such marriage celebration taking place on 16 December 1961;[8] and (3) the invitation to the wedding of Crasus, Jr., their eldest son, wherein Fely openly used her American husband's surname, Micklus.[9]

Fely's counsel filed a Notice,[10] and, later on, a Motion,[11] to take the deposition of witnesses, namely, Fely and her children, Crasus, Jr. and Daphne, upon written interrogatories, before the consular officers of the Philippines in New York and California, U.S.A, where the said witnesses reside. Despite the Orders[12] and Commissions[13] issued by the RTC to the Philippine Consuls of New York and California, U.S.A., to take the depositions of the witnesses upon written interrogatories, not a single deposition was ever submitted to the RTC. Taking into account that it had been over a year since respondent Crasus had presented his evidence and that Fely failed to exert effort to have the case progress, the RTC issued an Order, dated 05 October 1998,[14] considering Fely to have waived her right to present her evidence. The case was thus deemed submitted for decision.

Not long after, on 30 October 1998, the RTC promulgated its Judgment declaring the marriage of respondent Crasus and Fely null and void ab initio, on the basis of the following findings –

The ground bearing defendant's psychological incapacity deserves a reasonable consideration. As observed, plaintiff's testimony is decidedly credible. The Court finds that defendant had indeed exhibited unmistakable signs of psychological incapacity to comply with her marital duties such as striving for family unity, observing fidelity, mutual love, respect, help and support. From the evidence presented, plaintiff adequately established that the defendant practically abandoned him. She obtained a divorce decree in the United States of America and married another man and has establish [sic] another family of her own. Plaintiff is in an anomalous situation, wherein he is married to a wife who is already married to another man in another country.

Defendant's intolerable traits may not have been apparent or manifest before the marriage, the FAMILY CODE nonetheless allows the annulment of the marriage provided that these were eventually manifested after the wedding. It appears to be the case in this instance.

Certainly defendant's posture being an irresponsible wife erringly reveals her very low regard for that sacred and inviolable institution of marriage which is the foundation of human society throughout the civilized world. It is quite evident that the defendant is bereft of the mind, will and heart to comply with her marital obligations, such incapacity was already there at the time of the marriage in question is shown by defendant's own attitude towards her marriage to plaintiff.

In sum, the ground invoked by plaintiff which is defendant's psychological incapacity to comply with the essential marital obligations which already existed at the time of the marriage in question has been satisfactorily proven. The evidence in herein case establishes the irresponsibility of defendant Fely Ada Rosal Iyoy, firmly.

Going over plaintiff's testimony which is decidedly credible, the Court finds that the defendant had indeed exhibited unmistakable signs of such psychological incapacity to comply with her marital obligations. These are her excessive disposition to material things over and above the marital stability. That such incapacity was already there at the time of the marriage in question is shown by defendant's own attitude towards her marriage to plaintiff. And for these reasons there is a legal ground to declare the marriage of plaintiff Crasus L. Iyoy and defendant Fely Ada Rosal Iyoy null and void ab initio.[15]

Petitioner Republic, believing that the afore-quoted Judgment of the RTC was contrary to law and evidence, filed an appeal with the Court of Appeals. The appellate court, though, in its Decision, dated 30 July 2001, affirmed the appealed Judgment of the RTC, finding no reversible error therein. It even offered additional ratiocination for declaring the marriage between respondent Crasus and Fely null and void, to wit –

Defendant secured a divorce from plaintiff-appellee abroad, has remarried, and is now permanently residing in the United States. Plaintiff-appellee categorically stated this as one of his reasons for seeking the declaration of nullity of their marriage...

...

Article 26 of the Family Code provides:

"Art. 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

"WHERE A MARRIAGE BETWEEN A FILIPINO CITIZEN AND A FOREIGNER IS VALIDLY CELEBRATED AND A DIVORCE IS THEREAFTER VALIDLY OBTAINED ABROAD BY THE ALIEN SPOUSE CAPACITATING HIM OR HER TO REMARRY, THE FILIPINO SPOUSE SHALL LIKEWISE HAVE CAPACITY TO REMARRY UNDER PHILIPPINE LAW."

The rationale behind the second paragraph of the above-quoted provision is to avoid the absurd and unjust situation of a Filipino citizen still being married to his or her alien spouse, although the latter is no longer married to the Filipino spouse because he or she has obtained a divorce abroad. In the case at bench, the defendant has undoubtedly acquired her American husband's citizenship and thus has become an alien as well. This Court cannot see why the benefits of Art. 26 aforequoted can not be extended to a Filipino citizen whose spouse eventually embraces another citizenship and thus becomes herself an alien.

It would be the height of unfairness if, under these circumstances, plaintiff would still be considered as married to defendant, given her total incapacity to honor her marital covenants to the former. To condemn plaintiff to remain shackled in a marriage that in truth and in fact does not exist and to remain married to a spouse who is

incapacitated to discharge essential marital covenants, is verily to condemn him to a perpetual disadvantage which this Court finds abhorrent and will not countenance. Justice dictates that plaintiff be given relief by affirming the trial court's declaration of the nullity of the marriage of the parties.[16]

After the Court of Appeals, in a Resolution, dated 08 March 2002,[17] denied its Motion for Reconsideration, petitioner Republic filed the instant Petition before this Court, based on the following arguments/grounds –

- Abandonment by and sexual infidelity of respondent's wife do not per se constitute psychological incapacity.
- The Court of Appeals has decided questions of substance not in accord with law and jurisprudence considering that the Court of Appeals committed serious errors of law in ruling that Article 26, paragraph 2 of the Family Code is inapplicable to the case at bar.[18]

In his Comment[19] to the Petition, respondent Crasus maintained that Fely's psychological incapacity was clearly established after a full-blown trial, and that paragraph 2 of Article 26 of the Family Code of the Philippines was indeed applicable to the marriage of respondent Crasus and Fely, because the latter had already become an American citizen. He further questioned the personality of petitioner Republic, represented by the Office of the Solicitor General, to institute the instant Petition, because Article 48 of the Family Code of the Philippines authorizes the prosecuting attorney or fiscal assigned to the trial court, not the Solicitor General, to intervene on behalf of the State, in proceedings for annulment and declaration of nullity of marriages.

After having reviewed the records of this case and the applicable laws and jurisprudence, this Court finds the instant Petition to be meritorious.

I

The totality of evidence presented during trial is insufficient to support the finding of psychological incapacity of Fely.

Article 36, concededly one of the more controversial provisions of the Family Code of the Philippines, reads –

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.

Issues most commonly arise as to what constitutes psychological incapacity. In a series of cases, this Court laid down guidelines for determining its existence.

In *Santos v. Court of Appeals*,[20] the term psychological incapacity was defined, thus –

"... [P]sychological incapacity" should refer to no less than a mental (not physical) incapacity that causes a party to be truly cognitive 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 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 psychological condition must exist at the time the marriage is celebrated...

The psychological incapacity must be characterized by –

(a) Gravity – It must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in a marriage;

(b) Juridical Antecedence – It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and

(c) Incurability – It must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[21]

More definitive guidelines in the interpretation and application of Article 36 of the Family Code of the Philippines were handed down by this Court in *Republic v. Court of Appeals and Molina*,[22] which, although quite lengthy, by its significance, deserves to be reproduced below –

(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, 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 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*, 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.[23]

(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...

(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...

(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.[24]

A later case, *Marcos v. Marcos*, [25] further clarified that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist as a condition *sine qua non* for the declaration of nullity of marriage based on psychological incapacity. Accordingly, it is no longer necessary to allege expert opinion in a petition under Article 36 of the Family Code of the Philippines.[26] Such psychological incapacity, however, must be established by the totality of the evidence presented during the trial.

Using the guidelines established by the afore-mentioned jurisprudence, this Court finds that the totality of evidence presented by respondent Crasus failed miserably to establish the alleged psychological incapacity of his wife Fely; therefore, there is no basis for declaring their marriage null and void under Article 36 of the Family Code of the Philippines.

The only substantial evidence presented by respondent Crasus before the RTC was his testimony, which can be easily put into question for being self-serving, in the absence of any other corroborating evidence. He submitted only two other pieces of evidence: (1) the Certification on the recording with the Register of Deeds of the Marriage Contract between respondent Crasus and Fely, such marriage being celebrated on 16 December 1961; and (2) the invitation to the wedding of Crasus, Jr., their eldest son, in which Fely used her American husband's surname. Even considering the admissions made by Fely herself in her Answer to respondent Crasus's Complaint filed with the RTC, the evidence is not enough to convince this Court that Fely had such a grave mental illness that prevented her from assuming the essential obligations of marriage.

It is worthy to emphasize that Article 36 of the Family Code of the Philippines contemplates downright incapacity or inability to take cognizance of and to assume the basic marital obligations; not a mere refusal, neglect or difficulty, much less, ill will, on the part of the errant spouse.[27] Irreconcilable differences, conflicting personalities, emotional immaturity and irresponsibility, physical abuse, habitual alcoholism, sexual infidelity or perversion, and abandonment, by themselves, also do not warrant a finding of psychological incapacity under the said Article.[28]

As has already been stressed by this Court in previous cases, Article 36 "is not to be confused with a divorce law that cuts the marital bond at the time the causes therefore manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume." [29]

Fely's hot-temper, nagging, and extravagance; her abandonment of respondent Crasus; her marriage to an American; and even her flaunting of her American family and her American surname, may have hurt and embarrassed respondent Crasus and the rest of the family. Nonetheless, the afore-described characteristics, behavior, and acts of Fely do not satisfactorily establish a psychological or mental defect that is serious or grave, and which has been existence at the time of celebration of the marriage, and is incurable. Even when the rules have been relaxed and the personal examination of Fely by a psychiatrist or psychologist is no longer mandatory for the declaration of nullity of their marriage under Article 36 of the Family Code of the Philippines,[30] the totality of evidence presented during trial by respondent Crasus, as the spouse seeking the declaration of nullity of

marriage, must still prove the gravity, judicial antecedence, and incurability of the alleged psychological incapacity;<sup>[31]</sup> which, it failed to do so herein.

Moreover, this Court resolves any doubt in favor of the validity of the marriage.<sup>[32]</sup> No less than the Constitution of 1987 sets the policy to protect and strengthen the family as the basic social institution and marriage as the foundation of the family.<sup>[33]</sup>

## II

Article 26, paragraph 2 of the Family Code of the Philippines is not applicable to the case at bar.

According to Article 26, paragraph 2 of the Family Code of the Philippines –

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

As it is worded, Article 26, paragraph 2, refers to a special situation wherein one of the married couple is a foreigner who divorces his or her Filipino spouse. By its plain and literal interpretation, the said provision cannot be applied to the case of respondent Crasus and his wife Fely because at the time Fely obtained her divorce, she was still a Filipino citizen. Although the exact date was not established, Fely herself admitted in her Answer filed before the RTC that she obtained a divorce from respondent Crasus sometime after she left for the United States in 1984, after which she married her American husband in 1985. In the same Answer, she alleged that she had been an American citizen since 1988. At the time she filed for divorce, Fely was still a Filipino citizen, and pursuant to the nationality principle embodied in Article 15 of the Civil Code of the Philippines, she was still bound by Philippine laws on family rights and duties, status, condition, and legal capacity, even when she was already living abroad. Philippine laws, then and even until now, do not allow and recognize divorce between Filipino spouses. Thus, Fely could not have validly obtained a divorce from respondent Crasus.

## III

The Solicitor General is authorized to intervene, on behalf of the Republic, in proceedings for annulment and declaration of nullity of marriages.

Invoking Article 48 of the Family Code of the Philippines, respondent Crasus argued that only the prosecuting attorney or fiscal assigned to the RTC may intervene on behalf of the State in proceedings for annulment or declaration of nullity of marriages; hence, the Office of the Solicitor General had no personality to file the instant Petition on behalf of the State. Article 48 provides –

ART. 48. In all cases of annulment or declaration of absolute nullity of marriage, 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 the evidence is not fabricated or suppressed.

That Article 48 does not expressly mention the Solicitor General does not bar him or his Office from intervening in proceedings for annulment or declaration of nullity of marriages. Executive Order No. 292, otherwise known as the Administrative Code of 1987, appoints the Solicitor General as the principal law officer and legal defender of the Government.<sup>[34]</sup> His Office is tasked to represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers.<sup>[35]</sup>

The intent of Article 48 of the Family Code of the Philippines is to ensure that the interest of the State is

represented and protected in proceedings for annulment and declaration of nullity of marriages by preventing collusion between the parties, or the fabrication or suppression of evidence; and, bearing in mind that the Solicitor General is the principal law officer and legal defender of the land, then his intervention in such proceedings could only serve and contribute to the realization of such intent, rather than thwart it.

Furthermore, the general rule is that only the Solicitor General is authorized to bring or defend actions on behalf of the People or the Republic of the Philippines once the case is brought before this Court or the Court of Appeals.[36] While it is the prosecuting attorney or fiscal who actively participates, on behalf of the State, in a proceeding for annulment or declaration of nullity of marriage before the RTC, the Office of the Solicitor General takes over when the case is elevated to the Court of Appeals or this Court. Since it shall be eventually responsible for taking the case to the appellate courts when circumstances demand, then it is only reasonable and practical that even while the proceeding is still being held before the RTC, the Office of the Solicitor General can already exercise supervision and control over the conduct of the prosecuting attorney or fiscal therein to better guarantee the protection of the interests of the State.

In fact, this Court had already recognized and affirmed the role of the Solicitor General in several cases for annulment and declaration of nullity of marriages that were appealed before it, summarized as follows in the case of *Ancheta v. Ancheta*[37] –

In the case of *Republic v. Court of Appeals* [268 SCRA 198 (1997)], this Court laid down the guidelines in the interpretation and application of Art. 48 of the Family Code, one of which concerns the role of the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State:

(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. [*Id.*, at 213]

This Court in the case of *Malcampo-Sin v. Sin* [355 SCRA 285 (2001)] reiterated its pronouncement in *Republic v. Court of Appeals* [*Supra.*] regarding the role of the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State...

Finally, the issuance of this Court of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages,[38] which became effective on 15 March 2003, should dispel any other doubts of respondent Crasus as to the authority of the Solicitor General to file the instant Petition on behalf of the State. The Rule recognizes the authority of the Solicitor General to intervene and take part in the proceedings for annulment and declaration of nullity of marriages before the RTC and on appeal to higher courts. The pertinent provisions of the said Rule are reproduced below –

Sec. 5. Contents and form of petition. –

...

(4) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.

...

Sec. 18. Memoranda. – The court may require the parties and the public prosecutor, in consultation with the

Office of the Solicitor General, to file their respective memoranda in support of their claims within fifteen days from the date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.

Sec. 19. Decision. –

...

(2) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation.

(3) The decision becomes final upon the expiration of fifteen days from notice to the parties. Entry of judgment shall be made if no motion for reconsideration or new trial, or appeal is filed by any of the parties, the public prosecutor, or the Solicitor General.

...

Sec. 20. Appeal. –

...

(2) Notice of Appeal. – An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties.

Given the foregoing, this Court arrives at a conclusion contrary to those of the RTC and the Court of Appeals, and sustains the validity and existence of the marriage between respondent Crasus and Fely. At most, Fely's abandonment, sexual infidelity, and bigamy, give respondent Crasus grounds to file for legal separation under Article 55 of the Family Code of the Philippines, but not for declaration of nullity of marriage under Article 36 of the same Code. While this Court commiserates with respondent Crasus for being continuously shackled to what is now a hopeless and loveless marriage, this is one of those situations where neither law nor society can provide the specific answer to every individual problem.[39]

WHEREFORE, the Petition is GRANTED and the assailed Decision of the Court of Appeals in CA-G.R. CV No. 62539, dated 30 July 2001, affirming the Judgment of the RTC of Cebu City, Branch 22, in Civil Case No. CEB-20077, dated 30 October 1998, is REVERSED and SET ASIDE. The marriage of respondent Crasus L. Iyoy and Fely Ada Rosal-Iyoy remains valid and subsisting.

### **SO ORDERED.**

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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[1] Penned by Associate Justice Portia Aliño-Hormachuelos with Acting Presiding Justice Cancio C. Garcia and Associate Justice Mercedes Gozo-Dadole, concurring; Rollo, pp. 23-31.

[2] Penned by Judge Pampio A. Abarintos, Id., pp. 63-66.

[3] Records, pp. 1-3.

[4] Id., pp. 8-13.

[5] Id., pp. 25-29, 30-32.

[6] Id., pp. 23-24.

[7] TSN, 08 September 1997.

[8] Records, p. 36.

[9] Id., p. 37.

[10] Id., pp. 40-45.

[11] Id., pp. 48-49.

[12] Penned by Judge Pampio A. Abarintos, dated 07 November 1997 (Id., p. 51) and 01 August 1998 (Id., p. 58).

[13] Id., p. 52.

[14] Id., p. 61.

[15] Supra, note 2, pp. 65-66.

[16] Supra, note 1, pp. 28-30.

[17] Penned by Associate Justice Portia Alino-Hormachuelos with Associate Justices Cancio C. Garcia and Mercedes Gozo-Dadole, concurring; Rollo, p. 32.

[18] Id., p. 13.

[19] Id., pp. 36-41.

[20] G.R. No. 112019, 04 January 1995, 240 SCRA 20, 24.

[21] Id., pp. 33-34.

[22] G.R. No. 108763, 13 February 1997, 268 SCRA 198, 209-213.

[23] As will be subsequently discussed in this Decision, later jurisprudence and rules of procedure on petitions for the declaration of nullity of marriage under Rule 36 of the Family Code of the Philippines do not require the examination of the parties by an expert, i.e., a psychiatrist or psychologist, to establish the psychological incapacity of either or both parties.

[24] The roles of the prosecuting attorney or fiscal and the Solicitor General are now governed by the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 01-11-10-SC), which became effective 15 March 2003. The requirement of a certification by the Solicitor General on his agreement or opposition to the petition has been dispensed with to avoid delay.

[25] G.R. No. 136490, 19 October 2000, 343 SCRA 755.

[26] Section 2(d) of the Rule on Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 01-11-10-SC) reads –

Sec. 2. Petition for declaration of absolute nullity of void marriages. –

...

(d) What to allege. – A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential

marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged.

[27] Republic v. Court of Appeals and Molina, *supra*, note 22, p. 211.

[28] Carating-Siayngco v. Siayngco, G.R. No. 158896, 27 October 2004, 441 SCRA 422; Dedel v. Court of Appeals and Corpuz-Dedel, G.R. No. 151867, 29 January 2004, 421 SCRA 461; Guillen-Pesca v. Pesca, G.R. No. 136921, 17 April 2001, 356 SCRA 588; Marcos v. Marcos, *supra*, note 25; Hernandez v. Court of Appeals, G.R. No. 126010, 08 December 1999, 320 SCRA 76.

[29] Marcos v. Marcos, *supra*, note 25, p. 765.

[30] *Ibid.*

[31] Santos v. Court of Appeals, *supra*, note 21.

[32] Carating-Siayngco v. Siayngco, *supra*, note 28; Republic v. Dagdag, G.R. No. 109975, 09 February 20001, 351 SCRA 425; Marcos v. Marcos, *supra*, note 25; Hernandez v. Court of Appeals, *supra*, note 28; Republic v. Court of Appeals and Molina, *supra*, note 22.

[33] Sections 1 and 2, Article XV of the Philippine Constitution of 1987.

[34] Book IV, Title III, Chapter 12, Section 34.

[35] *Id.*, Section 35.

[36] Metropolitan Bank and Trust Company v. Tonda, G.R. No. 134436, 16 August 2000, 338 SCRA 254, 265.

[37] G.R. No. 145370, 04 March 2004, 424 SCRA 725, 738-739.

[38] A.M. No. 02-11-10-SC.

[39] Carating-Siayngco v. Siayngco, *supra*, note 28, p. 439; Dedel v. Court of Appeals and Corpuz-Dedel, *supra*, note 28, p. 467; Santos v. Court of Appeals, *supra*, note 20, p. 36.

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