

JOSE REYNALDO B. OCHOSA, PETITIONER, VS. BONA J. ALANO AND REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 167459. January 26, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to set aside the Decision[1] dated October 11, 2004 as well as the Resolution[2] dated March 10, 2005 of the Court of Appeals in CA-G.R. CV No. 65120, which reversed and set aside the Decision[3] dated January 11, 1999 of the Regional Trial Court of Makati City, Branch 140 in Civil Case No. 97-2903. In the said January 11, 1999 Decision, the trial court granted petitioner Jose Reynaldo Ochosa's (Jose) petition for the declaration of nullity of marriage between him and private respondent Bona J. Alano (Bona).

The relevant facts of this case, as outlined by the Court of Appeals, are as follows:

It appears that Jose met Bona in August 1973 when he was a young lieutenant in the AFP while the latter was a seventeen-year-old first year college drop-out. They had a whirlwind romance that culminated into sexual intimacy and eventual marriage on 27 October 1973 before the Honorable Judge Cesar S. Principe in Basilan. The couple did not acquire any property. Neither did they incur any debts. Their union produced no offspring. In 1976, however, they found an abandoned and neglected one-year-old baby girl whom they later registered as their daughter, naming her Ramona Celeste Alano Ochosa.

During their marriage, Jose was often assigned to various parts of the Philippine archipelago as an officer in the AFP. Bona did not cohabit with him in his posts, preferring to stay in her hometown of Basilan. Neither did Bona visit him in his areas of assignment, except in one (1) occasion when Bona stayed with him for four (4) days.

Sometime in 1985, Jose was appointed as the Battalion Commander of the Security Escort Group. He and Bona, along with Ramona, were given living quarters at Fort Bonifacio, Makati City where they resided with their military aides.

In 1987, Jose was charged with rebellion for his alleged participation in the failed coup d'etat. He was incarcerated in Camp Crame.

It appears that Bona was an unfaithful spouse. Even at the onset of their marriage when Jose was assigned in various parts of the country, she had illicit relations with other men. Bona apparently did not change her ways when they lived together at Fort Bonifacio; she entertained male visitors in her bedroom whenever Jose was out of their living quarters. On one occasion, Bona was caught by Demetrio Bajet y Lita, a security aide, having sex with Jose's driver, Corporal Gagarin. Rumors of Bona's sexual infidelity circulated in the military community. When Jose could no longer bear these rumors, he got a military pass from his jail warden and confronted Bona.

During their confrontation, Bona admitted her relationship with Corporal Gagarin who also made a similar admission to Jose. Jose drove Bona away from their living quarters. Bona left with Ramona and went to

Basilan.

In 1994, Ramona left Bona and came to live with Jose. It is Jose who is currently supporting the needs of Ramona.

Jose filed a Petition for Declaration of Nullity of Marriage, docketed as Civil Case No. 97-2903 with the RTC of Makati City, Branch 140, seeking to nullify his marriage to Bona on the ground of the latter's psychological incapacity to fulfill the essential obligations of marriage.

Summons with a copy of the petition and its annexes were duly served upon Bona who failed to file any responsive pleading during the reglementary period.

Pursuant to the order of the trial court, the Public Prosecutor conducted an investigation to determine whether there was collusion between the parties. Said prosecutor submitted a report that she issued a subpoena to both parties but only Jose appeared; hence, it can not be reasonably determined whether or not there was collusion between them.

Trial on the merits of the case ensued. Petitioner along with his two military aides, Gertrudes Himpayan Padernal and Demetrio Bajet y Lita, testified about respondent's marital infidelity during the marriage.

The fourth and final witness was Elizabeth E. Rondain, a psychiatrist, who testified that after conducting several tests, she reached the conclusion that respondent was suffering from histrionic personality disorder which she described as follows:

"Her personality is that she has an excessive emotion and attention seeking behavior. So therefore they don't develop sympathy in feelings and they have difficulty in maintaining emotional intimacy. In the case of Mr. Ochosa he has been a military man. It is his duty to be transferred in different areas in the Philippines. And while he is being transferred from one place to another because of his assignments as a military man, Mrs. Bona Alano refused to follow him in all his assignments. There were only few occasions in which she followed him. And during those times that they were not living together, because of the assignments of Mr. Ochosa she developed extra marital affair with other man of which she denied in the beginning but in the latter part of their relationship she admitted it to Mr. Ochosa that she had relationship with respondent's driver. I believe with this extra marital affair that is her way of seeking attention and seeking emotions from other person and not from the husband. And of course, this is not fulfilling the basic responsibility in a marriage."

According to Rondain, respondent's psychological disorder was traceable to her family history, having for a father a gambler and a womanizer and a mother who was a battered wife. There was no possibility of a cure since respondent does not have an insight of what is happening to her and refused to acknowledge the reality.

With the conclusion of the witnesses' testimonies, petitioner formally offered his evidence and rested his case.

The Office of the Solicitor General (OSG) submitted its opposition to the petition on the ground that "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 (Santos v. CA, 240 SCRA 20 [1995])."

In a Decision dated 11 January 1999, the trial court granted the petition and nullified the parties' marriage on the following findings, viz:

x x x x

Article 36 of the Family Code, as amended, provides as follows:

'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.'

Such a ground to be invalidative (sic) of marriage, the degree of incapacity must exhibit GRAVITY, ANTECEDENCE and INCURABILITY.

From the evidence presented, the Court finds that the psychological incapacity of the respondent exhibited GRAVITY, ANTECEDENCE and INCURABILITY.

It is grave because the respondent did not carry out the normal and ordinary duties of marriage and family shouldered by any average couple existing under everyday circumstances of life and work. The gravity was manifested in respondent's infidelity as testified to by the petitioner and his witnesses.

The psychological incapacity of the respondent could be traced back to respondent's history as testified to by the expert witness when she said that respondent's bad experience during her childhood resulted in her difficulty in achieving emotional intimacy, hence, her continuous illicit relations with several men before and during the marriage.

Considering that persons suffering from this kind of personality disorder have no insight of their condition, they will not submit to treatment at all. As in the case at bar, respondent's psychological incapacity clinically identified as Histrionic Personality Disorder will remain incurable.[4] (Emphasis supplied.)

Thus, the dispositive portion of the trial court Decision dated January 11, 1999 read:

WHEREFORE, premises considered, judgment is hereby rendered DECLARING the marriage of JOSE REYNALDO B. OCHOSA and BONA J. ALANO on October 27, 1973 at Basilan City VOID AB INITIO on ground of psychological incapacity of the respondent under Article 36 of the Family Code as amended with all the effects and consequences provided for by all applicable provisions of existing pertinent laws.

After this Decision becomes final, let copies thereof be sent to the Local Civil Registrar of Basilan City who is directed to cancel the said marriage from its Civil Registry, and the Local Civil Registrar of Makati City for its information and guidance.[5]

The Office of the Solicitor General (OSG) appealed the said ruling to the Court of Appeals which sided with the OSG's contention that the trial court erred in granting the petition despite Jose's abject failure to discharge the burden of proving the alleged psychological incapacity of his wife, Bona, to comply with the essential marital obligations.

Thus, the Court of Appeals reversed and set aside the trial court Decision in its assailed Decision dated October 11, 2004, the dispositive portion of which states:

WHEREFORE, the appeal is GRANTED, the appealed Decision dated 11 January 1999 in Civil Case No. 97-2903 of the Regional Trial Court (RTC) of Makati City, Branch 140, is accordingly REVERSED and SET ASIDE, and another is entered DISMISSING the petition for declaration of nullity of marriage.[6]

Jose filed a Motion for Reconsideration but this was denied by the Court of Appeals for lack of merit in its assailed Resolution dated March 10, 2005.

Hence, this Petition.

The only issue before this Court is whether or not Bona should be deemed psychologically incapacitated to comply with the essential marital obligations.

The petition is without merit.

The petition for declaration of nullity of marriage which Jose filed in the trial court hinges on Article 36 of the Family Code, to wit:

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.

In the landmark case of *Santos v. Court of Appeals*,^[7] we observed 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 marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

Soon after, incorporating the three basic requirements of psychological incapacity as mandated in *Santos*, we laid down in *Republic v. Court of Appeals and Molina*^[8] the following guidelines in the interpretation and application of Article 36 of the Family Code:

(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 physically 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.

(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. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(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 outburst" 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 Article 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. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

"The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally - subject to our law on evidence - what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church - while remaining independent, separate and apart from each other - shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(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.[9] (Citations omitted.)

In *Marcos v. Marcos*,^[10] we previously held that the foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically identified." What is important is the presence of evidence that can adequately establish the party's psychological condition. For, indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

It is also established in jurisprudence that from these requirements arise the concept that Article 36 of the Family Code does not really dissolve a marriage; it simply recognizes that there never was any marriage in the first place because the affliction - already then existing - was so grave and permanent as to deprive the afflicted party of awareness of the duties and responsibilities of the matrimonial bond he or she was to assume or had assumed.^[11]

A little over a decade since the promulgation of the Molina guidelines, we made a critical assessment of the same in *Ngo Te v. Yu-Te*,^[12] to wit:

In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the OSG's exaggeration of Article 36 as

the "most liberal divorce procedure in the world." The unintended consequences of Molina, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, Molina has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying Molina, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. Ironically, the Roman Rota has annulled marriages on account of the personality disorders of the said individuals.[13]

However, our critique did not mean that we had declared an abandonment of the Molina doctrine. On the contrary, we simply declared and, thus, clarified in the same Te case that there is a need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. Furthermore, we reiterated in the same case the principle that each case must be judged, not on the basis of a priori assumptions, predilections or generalizations but according to its own facts. And, to repeat for emphasis, courts should 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.[14]

In the case at bar, the trial court granted the petition for the declaration of nullity of marriage on the basis of Dr. Elizabeth Rondain's testimony[15] and her psychiatric evaluation report[16] as well as the individual testimonies of Jose[17] and his military aides - Mrs. Gertrudes Himpayan Padernal[18] and Corporal Demetrio Bajet.[19]

We are sufficiently convinced, after a careful perusal of the evidence presented in this case, that Bona had been, on several occasions with several other men, sexually disloyal to her spouse, Jose. Likewise, we are persuaded that Bona had indeed abandoned Jose. However, we cannot apply the same conviction to Jose's thesis that the totality of Bona's acts constituted psychological incapacity as determined by Article 36 of the Family Code. There is inadequate credible evidence that her "defects" were already present at the inception of, or prior to, the marriage. In other words, her alleged psychological incapacity did not satisfy the jurisprudential requisite of "juridical antecedence."

With regard to Bona's sexual promiscuity prior to her marriage to Jose, we have only the uncorroborated testimony of Jose made in open court to support this allegation. To quote the pertinent portion of the transcript:

Q:

So, what was the reason why you have broken with your wife after several years -

A:

Well, I finally broke up with my wife because I can no longer bear the torture because of the gossips that she had an affair with other men, and finally, when I have a chance to confront her she admitted that she had an affair with other men.

Q:

With other men. And, of course this - her life with other men of course before the marriage you have already known -

A:

Yes, your honor.

Q:

So, that this gossips - because you said that you thought that this affair would go to end after your marriage?

A:

Yes, I was thinking about that.

Q:

So, that after several years she will not change so that's why you can't bear it anymore?

A:

Yes, ma'am.[20]

Dr. Rondain's testimony and psychiatric evaluation report do not provide evidentiary support to cure the doubtful veracity of Jose's one-sided assertion. Even if we take into account the psychiatrist's conclusion that Bona harbors a Histrionic Personality Disorder that existed prior to her marriage with Jose and this mental condition purportedly made her helplessly prone to promiscuity and sexual infidelity, the same cannot be taken as credible proof of antecedence since the method by which such an inference was reached leaves much to be desired in terms of meeting the standard of evidence required in determining psychological incapacity.

The psychiatrist's findings on Bona's personality profile did not emanate from a personal interview with the subject herself as admitted by Dr. Rondain in court, as follows:

Q:

How about, you mentioned that the petitioner came for psychological test, how about the respondent, did she come for interview and test?

A:

No, ma'am.

Q:

Did you try to take her for such?

A:

Yes, ma'am.

Q:

And what did she tell you, did she come for an interview?

A:

There was no response, ma'am.[21]

As a consequence thereof, Dr. Rondain merely relied on her interview with Jose and his witness, Mrs. Padernal, as well as the court record of the testimonies of other witnesses, to wit:

Q:

And you said you did interviews. Who did the interview?

A:

I interviewed Mr. Ochosa and their witness Padernal, ma'am.

Q:

When you say Padernal are you referring to Gertrudes Himpayan Padernal who testified in this court?

A:

Yes, ma'am.

x x x x

Q:

Other than the interviews what else did you do in order to evaluate members of the parties?

A:

I also interviewed (sic) the transcript of stenographic notes of the testimonies of other witnesses, ma'am.

x x x x

Q:

Was there also a psychological test conducted on the respondent?

A:

Yes, your honor.

Q:

It was on the basis of the psychological test in which you based your evaluation report?

A:

It was based on the psychological test conducted and clinical interview with the other witnesses, your Honor.[22]

Verily, Dr. Rondain evaluated Bona's psychological condition indirectly from the information gathered solely from Jose and his witnesses. This factual circumstance evokes the possibility that the information fed to the psychiatrist is tainted with bias for Jose's cause, in the absence of sufficient corroboration.

Even if we give the benefit of the doubt to the testimonies at issue since the trial court judge had found them to be credible enough after personally witnessing Jose and the witnesses testify in court, we cannot lower the evidentiary benchmark with regard to information on Bona's pre-marital history which is crucial to the issue of antecedence in this case because we have only the word of Jose to rely on. In fact, Bona's dysfunctional family portrait which brought about her Histrionic Personality Disorder as painted by Dr. Rondain was based solely on the assumed truthful knowledge of Jose, the spouse who has the most to gain if his wife is found to be indeed psychologically incapacitated. No other witness testified to Bona's family history or her behavior prior to or at the beginning of the marriage. Both Mrs. Padernal and Corporal Bajet came to know Bona only during their employment in petitioner's household during the marriage. It is undisputed that Jose and Bona were married in 1973 while Mrs. Padernal and Corporal Bajet started to live with petitioner's family only in 1980 and 1986, respectively.

We have previously held that, in employing a rigid and stringent level of evidentiary scrutiny to cases like this, we do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory; jurisprudence holds that this type of examination is not a mandatory requirement. While such examination is desirable, we recognize that it may not be practical in all instances given the oftentimes estranged relations between the parties. For a determination though of a party's complete personality profile, information coming

from persons with personal knowledge of the juridical antecedents may be helpful. This is an approach in the application of Article 36 that allows flexibility, at the same time that it avoids, if not totally obliterate, the credibility gaps spawned by supposedly expert opinion based entirely on doubtful sources of information.[23]

However, we have also ruled in past decisions that to make conclusions and generalizations on a spouse's psychological condition based on the information fed by only one side, similar to what we have pointed out in the case at bar, is, to the Court's mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.[24]

Anent the accusation that, even at the inception of their marriage, Bona did not wish to be with Jose as a further manifestation of her psychological incapacity, we need only to look at the testimonial records of Jose and his witnesses to be convinced otherwise, to wit:

JOSE OCHOSA'S TESTIMONY:

Q:

How long did you stay with your wife?

A:

We were married in 1973 and we separated in 1988 but in all those years there were only few occasions that we were staying together because most of the time I'm in the field.

Q:

Now, you said most of the time you were in the field, did you not - your wife come with you in any of your assignments?

A:

Never, but sometimes she really visited me and stayed for one (1) day and then -

Q:

And, where did your wife stayed when she leaves you?

A:

She was staying with her mother in Basilan.

Q:

Where were you assigned most of the time?

A:

I was assigned in Davao, Zamboanga, Cotabato, Basilan.

Q:

And, of course she would come to your place every now and then because it is not very far -

A:

No, ma'am, once in a while only.

Q:

Did you not go home to your conjugal home?

A:

I have a chanced also to go home because we were allowed to at least three (3) days every other month.

Q:

So, if you start from the marriage up to 1988 so that is 16 years you were supposed to have been living together?

A:

No, actually in 19 - middle of 1987 because in 1987 I was in x x x.[25]

GERTRUDES PADERNAL'S TESTIMONY:

Q:

Now, do you know when they lived together as husband and wife?

A:

1979.

Q:

And you said that you have known the petitioner and the respondent in this case because in fact, you lived with them together in the same quarters. Does the quarters have different rooms?

A:

Yes, ma'am.

Q:

But very near each other?

A:

Yes, ma'am.

Q:

You know them because of the proximity of the quarters?

A:

Yes, ma'am.

Q:

It was only during this 1980 to 1983, three (3) years that you lived together that you have a chance to be with the spouses?

x x x x

A:

Since 1980 to 1983 we lived together in the same house.

x x x x

Q:

Now, Madam Witness, after 1983, where did you reside together with your husband?

A:

In Cagayan de Oro and in 1986 we came back to Manila, in Fort Bonifacio.

Q:

You mean, in the same house where petitioner and the respondent lived together?

A:

Yes. Ma'am.

Q:

How long did you live in the house where the petitioner and the respondent stay?

A:

Twelve years now since 1983 to 1995.

Q:

Where was the petitioner working at that time, from 1982 to 1995?

A:

He is a soldier, a Colonel.

Q:

Do you know where he was assigned during this time?

A:

Yes, ma'am, G-3.

Q:

May we know where this G-3 is?

A:

Fort Bonifacio, ma'am.

Q:

What about the wife, where does she stay?

A:

At Fort Bonifacio, in their house.[26]

DR. ELIZABETH E. RONDAIN'S TESTIMONY:

Q:

Now, they got married in 1973, am I correct?

A:

Yes, ma'am.

Q:

But the matter of the work or assignment of the petitioner, he was assigned in different Provinces or Barangays in the Philippines?

A:

Yes, ma'am.

Q:

Now, when the wife or the respondent in this case did not go with the husband in different places of his assignment did you ask her why what was the reason why she did not like to go those places?

A:

She just did not want to. The wife did not go with him because... by transferring from one place to another, she just don't want to go, she just wanted to stay in Basilan where her hometown is, ma'am.

Q:

Did the petitioner herein tell you why the respondent don't want to go with him?

A:

Yes, I asked, the answer of the petitioner was she simply did not want to go with him because she did not want him to be appointed to far away places.

Q:

And would it be that since she did not like to go with the husband in some far away different assignments she also assumed that the assignments were in this war regions they were always fighting considering the place in Basilan they were in fighting atmosphere?

A:

It is possible but he was transferred to Manila and she also refused to stay in Manila, ma'am.

Q:

When was that that she refused to come to Manila?

A:

I think, sometime in 1983, ma'am. She did not follow immediately. She stayed with him only for four (4) months, ma'am.

Q:

Now, do you know if the petitioner and the respondent were living together as husband and wife for this period

of time during the relationship?

A:

Yes, ma'am. After their marriage I believe their relationship was good for a few months until he was transferred to Julu. I believe during that time when they were together the husband was giving an attention to her. The husband was always there and when the husband transferred to Basilan, the attention was not there anymore, ma'am.[27]

It is apparent from the above-cited testimonies that Bona, contrary to Jose's assertion, had no manifest desire to abandon Jose at the beginning of their marriage and was, in fact, living with him for the most part of their relationship from 1973 up to the time when Jose drove her away from their conjugal home in 1988. On the contrary, the record shows that it was Jose who was constantly away from Bona by reason of his military duties and his later incarceration. A reasonable explanation for Bona's refusal to accompany Jose in his military assignments in other parts of Mindanao may be simply that those locations were known conflict areas in the seventies. Any doubt as to Bona's desire to live with Jose would later be erased by the fact that Bona lived with Jose in their conjugal home in Fort Bonifacio during the following decade.

In view of the foregoing, the badges of Bona's alleged psychological incapacity, i.e., her sexual infidelity and abandonment, can only be convincingly traced to the period of time after her marriage to Jose and not to the inception of the said marriage.

We have stressed time and again that Article 36 of the Family Code 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 the 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. These marital obligations are those provided under Articles 68 to 71, 220, 221 and 225 of the Family Code.[28]

While we are not insensitive to petitioner's suffering in view of the truly appalling and shocking behavior of his wife, still, we are bound by judicial precedents regarding the evidentiary requirements in psychological incapacity cases that must be applied to the present case.

WHEREFORE, the petition is DENIED and the assailed Decision of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 28-39; penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Portia Aliño-Hormachuelos and Aurora Santiago-Lagman, concurring.

[2] Id. at 41.

[3] Id. at 42-46.

[4] Id. at 28-33.

[5] Id. at 46.

[6] Id. at 39.

[7] 310 Phil. 21, 39 (1995).

- [8] 335 Phil. 664 (1997).
- [9] Id. at 676-680.
- [10] 397 Phil. 840, 850 (2000).
- [11] Toring v. Toring, G.R. No. 165321, August 3, 2010.
- [12] G.R. No. 161793, February 13, 2009, 579 SCRA 193.
- [13] Id. at 224-225.
- [14] Id. at 228.
- [15] TSN, September 14, 1998.
- [16] Records, pp. 70-74.
- [17] TSN, March 3, 1998.
- [18] TSN, July 1, 1998.
- [19] TSN, August 21, 1998.
- [20] TSN, March 3, 1998, p. 8.
- [21] TSN, September 14, 1998, p. 8.
- [22] Id. at 6-17.
- [23] Suazo v. Suazo, G.R. No. 164493, March 12, 2010.
- [24] Padilla-Rumbaua v. Rumbaua, G.R. No. 166738, August 14, 2009, 596 SCRA 157, 181.
- [25] TSN, March 3, 1998, pp. 9-10.
- [26] TSN, July 1, 1998, pp. 7-10.
- [27] TSN, September 14, 1998, pp. 13-15.
- [28] Marcos v. Marcos, supra note 10 at 857.

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