

NICOLAS JUAREZ, PLAINTIFF AND APPELLANT, VS. RAMONA D. TURON, DEFENDANT AND APPELLEE.*G.R. No. 28643. March 19, 1928*

Ponente: STATEMENT After the formal pleas, plaintiff's complaint filed on February 10, 1927, alleges: "1. That the plaintiff and the defendant are of age, the former residing at No. 104 Calle Zurbaran and the latter at No. 132 Calle Castanos, both within the jurisdiction of this City of Manila; "2. That the plaintiff and the defendant are husband and wife, having contracted marriage on October 28, 1921; "3. That during the marriage of the plaintiff and the defendant a daughter was born of it, known as Lourdes Juarez, who is a minor and who is at present in the possession of the defendant; "4. That after legal proceedings, the defendant was convicted of adultery committed with Gregorio Ramos in the City of Manila, Philippine Islands, in criminal case No. 32005 of this court, the offended party in said case being the plaintiff above named; "5. That the judgment for adultery mentioned in the preceding paragraph has become final and was executed; "6. That the plaintiff and the defendant have no conjugal property; and "7. That the plaintiff has also no private property." And plaintiff prays that he be decreed a divorce and have judgment for costs. August 11, 1927, the complaint was amended as follows: "After paragraph 5 and before 6 let the following new paragraphs be inserted which shall be called 5A, 5B, and 5C and which shall read as follows: "5A. That the plaintiff, one year before the filing of this complaint, was domiciled and residing at the City of Manila, Philippine Islands. "5B. That the adultery committed by the herein defendant has never been consented to nor pardoned by the plaintiff. "5C. That this action is filed within one year following the date when the plaintiff obtained knowledge of the cause." The defendant made a default. For the purpose of proving his case, the plaintiff offered in evidence the record in and by which his wife was convicted of adultery, and was called and testified as a witness in his own behalf. The lower court denied plaintiff any relief, and dismissed the complaint, from which he appeals and assigns the following errors: "THE LOWER COURT ERRED IN HOLDING: "1. That the document Exhibit B, which is a certified copy of the judgment of conviction rendered in criminal case No. 32005 of the Court of First Instance of Manila, for the crime of adultery instituted against the defendant, is not an evidence that she had committed said crime. "2. That this action was commenced out of the time in which it should have been brought according to the provisions of Act No. 2710; and "3. In refusing to decree the divorce prayed for in the complaint that initiated this action." JOHNS, J.

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STATEMENT

After the formal pleas, plaintiff's complaint filed on February 10, 1927, alleges:

"1. That the plaintiff and the defendant are of age, the former residing at No. 104 Calle Zurbaran and the latter at No. 132 Calle Castanos, both within the jurisdiction of this City of Manila;

"2. That the plaintiff and the defendant are husband and wife, having contracted marriage on October 28, 1921;

"3. That during the marriage of the plaintiff and the defendant a daughter was born of it, known as Lourdes Juarez, who is a minor and who is at present in the possession of the defendant;

"4. That after legal proceedings, the defendant was convicted of adultery committed with Gregorio Ramos in the City of Manila, Philippine Islands, in criminal case No. 32005 of this court, the offended party in said case being the plaintiff above named;

"5. That the judgment for adultery mentioned in the preceding paragraph has become final and was executed;

"6. That the plaintiff and the defendant have no conjugal property; and

"7. That the plaintiff has also no private property."

And plaintiff prays that he be decreed a divorce and have judgment for costs.

August 11, 1927, the complaint was amended as follows:

"After paragraph 5 and before 6 let the following new paragraphs be inserted which shall be called 5A, 5B, and 5C and which shall read as follows:

"5A. That the plaintiff, one year before the filing of this complaint, was domiciled and residing at the City of Manila, Philippine Islands.

"5B. That the adultery committed by the herein defendant has never been consented to nor pardoned by the plaintiff.

"5C. That this action is filed within one year following the date when the plaintiff obtained knowledge of the cause."

The defendant made a default. For the purpose of proving his case, the plaintiff offered in evidence the record in and by which his wife was convicted of adultery, and was called and testified as a witness in his own behalf. The lower court denied plaintiff any relief, and dismissed the complaint, from which he appeals and assigns the following errors:

"THE LOWER COURT ERRED IN HOLDING:

"1. That the document Exhibit B, which is a certified copy of the judgment of conviction rendered in criminal case No. 32005 of the Court of First Instance of Manila, for the crime of adultery instituted against the defendant, is not an evidence that she had committed said crime.

"2. That this action was commenced out of the time in which it should have been brought according to the provisions of Act No. 2710; and

"3. In refusing to decree the divorce prayed for in the complaint that initiated this action."

JOHNS, J.:

The decision of the lower court is as follows:

"This is a complaint for divorce wherein it is alleged by the plaintiff among other things:

"That the defendant, after legal proceedings, was convicted of adultery committed with Gregorio Ramos in the City of Manila, P. I., in criminal case No. 32005 of this court, the offended party in said case being the plaintiff. himself above named; and

"That the judgment for adultery mentioned in the preceding paragraph has become final and was executed.

"The defendant having been summoned, she was later declared in default at the instance of the plaintiff whose evidence was received by the court in the absence of the defendant. The plaintiff, however, has not presented any evidence upon the adultery committed by the defendant and which can be the only ground for the action herein brought. He did present the judgment rendered in the aforesaid criminal case for adultery against the same defendant, proving, moreover, that said judgment has become final; but this being a civil action, completely different from the criminal one for adultery against the same defendant, and in which the parties are also different, although in fact and substance the cause of action is the same in the two cases, in the one now before

the court for divorce evidence must have been presented that adultery was committed by the defendant, the judgment of conviction rendered in the criminal case against the same defendant not being sufficient, since as evidence it has no effect in this action other than to show that the guilt of the defendant was proven in a final judgment rendered in a criminal case, which is a condition required by section 8 of Act No. 2710 before divorce can be granted. Where it not for this requirement said judgment would be inadmissible as evidence in this case, except for the purpose of impeaching the veracity of the defendant as witness, if she had appeared and testified. Upon this point the following doctrine is well known: 'Upon the foregoing principle, it is obvious that, as a general rule, a verdict and judgment in a criminal case, though admissible to establish the fact of the mere rendition of the judgment, cannot be given in evidence in a civil action, to establish the facts on which it was rendered, Vol. 1, Greenleaf on Evidence, par. 537. Which doctrine was cited and approved by the Supreme Court of these Islands in the case of 'Ocampo vs. Jenkins, 14 Phil., pp. 681, 689.'

"On the other hand, the law requires that the action for divorce be brought within one year from the date when the plaintiff acquired knowledge of the cause of action brought by him, but the herein complaint was filed on February 10, 1927, notwithstanding that according to plaintiff himself, he acquired knowledge of the adultery of the defendant about August, 1924.

"For the foregoing, the court overrules the complaint, holding that judgment cannot be rendered for divorce as prayed for by the plaintiff. Without special pronouncement as to costs.

"So ordered."

The finding of the lower court, that the plaintiff knew of the alleged adultery in August, 1924, is well sustained by his own evidence, and the complaint in this action was filed on February 10, 1927, about two and a half years after the plaintiff knew of the adultery, for which he now seeks a divorce.

All things considered, the judgment of the lower court is affirmed, with costs. So ordered.

Malcolm, Ostrand, and Romualdez, JJ., concur.

CONCURRING

JOHNSON, J.:

I concur in the dispositive part of the majority decision. I prefer to leave the discussion of the incongruities of section 4 of Act No. 2710 until the question is squarely presented, hoping that in the meantime the Legislature may have time to make it more plain if that seems necessary. Section 4 contains three periods of prescription or limitation of action for divorce:

(a) Under said section an action for divorce cannot be filed except within one year from and after the date on which the complainant became cognizant of the cause; (b) an action for divorce must be filed within five years from and after the date when such cause occurred; and (c) when the cause occurred prior to the date on which this Act took effect (March 11, 1917), then the action for divorce must be commenced within one year from and after such date.

It is difficult to harmonize the provisions of paragraphs (a) and (b) above, of said section 4. They must mean, first, that the party aggrieved must bring his action for divorce within one year after he had knowledge of the cause and, second, that such action cannot be maintained after the lapse of five years from the date when such cause occurred, whether the complainant was cognizant of the cause or not. In other words, an action for divorce under said Act must be commenced within a period of one year from the time the complainant has become cognizant of the causes justifying his divorce, but such action cannot be maintained after the lapse of five years from and after

the date when the cause for divorce occurred. That, in my judgment, must be the interpretation of that section as to the two causes of prescription or limitation of action. However, that conclusion leaves much yet to be explained.

In the present case the action was not begun within one year from and after the date on which the complainant became cognizant of the causes justifying his divorce. His action is therefore clearly barred.

CONCUR AND DISSENTING

VILLAMOR AND VILLA-REAL, JJ.:

The preceding decision affirms the judgment of the lower court with costs.

The lower court's decision is here reproduced in its entirety, and this court, in affirming it, makes the following comment: "The finding of the lower court, that the plaintiff knew of the alleged adultery in August, 1924 is well sustained by his own evidence, and the complaint in this action was filed on February 10, 1927, about two and a half years after the plaintiff knew of the adultery, for which he now seeks a divorce."

I vote for the reversal of the judgment appealed from, on the grounds hereinafter briefly set forth.

The judgment appealed from dismissed the herein complaint for divorce for two reasons: (1) Because the action was instituted out of time; and (2) because the final judgment in a criminal action for adultery is insufficient evidence in a civil action for divorce. Both reasons are, in my opinion, untenable.

According to the evidence, the plaintiff learned of his wife's adultery in August, 1924; or, more correctly, the adultery took place on August 1, 1924. The information for adultery was filed on January 21, 1926, and judgment was rendered in the criminal case on March 2, 1926. This judgment became final and subject, to execution. The complaint for divorce was filed on February 10, 1927, and the judgment dismissing it was rendered on August 17, 1927. Such are the facts proved at the trial. Has the plaintiff's action to divorce his legitimate wife prescribed? What does the law provide with respect to the prescription of the action for divorce?

Section 4 of Act No. 2710 provides:

"An action for divorce cannot be filed except within one year from and after the date on which the plaintiff became cognizant of the cause and within five years from and after the date when such cause occurred; but if such cause occurred prior to the date on which this Act takes effect, then only within one year from and after such date."

This law took effect on March 11, 1917.

As may be seen, the law establishes two prescriptive periods, according to whether the cause of the divorce occurred before or after said law went into operation. If before, the prescriptive period of the action is one year, that is, within the first year after the law became effective; if after, as in the present case, the prescriptive period is five years, to be reckoned from the year following the date on which the plaintiff learned of the cause for divorce, namely, his wife's adultery.

As August 1, 1924, was the date on which the plaintiff learned of the adultery, the action for divorce does not arise from said date, but from August 1, 1925, or one year from August 1, 1924. The year from August, 1924 to August, 1925, is not to be counted for the purposes of prescription; it is the year of grace which the law grants the spouses for their reconciliation, because the State is more interested in the continuance of the conjugal union than in the separation of the spouses, for the welfare of the family and of society. If according to the law, the plaintiff's

action lasts five years from August 1, 1925, he may bring it at any time between then and August 1, 1930. And the action having been instituted on February 10, 1927, it is evident that said action was filed within the period of time authorized by the law.

It must be noted that, as has been said, the aforementioned section 4 of Act No. 2710 establishes two periods of prescription: One of one year, if the cause of action occurred before Act No. 2710 took effect; and another of five years, if the cause arose thereafter. If the opinion of this court affirming that of the lower court were to prevail, the distinction established by the law would disappear, and the law amended by a judicial decision.

To my mind, the reason for the two prescriptive periods of action rests on the fact that when the cause of action took place before the Divorce Law became effective, the legislator intended to limit the effects of this law, so as not to favor the institution of divorce proceedings; and when the cause of action occurred after said law had become effective, the same legislator probably took into account the precedents of several States of America, such as Arkansas, Kentucky, etc., which fix the period of five years for the commencement of the action, to be reckoned from the date of the act giving rise to it. (See Hirsh, Tabulated Digest of the Divorce Law of the United States.)

At any rate, no matter how arbitrary the fixing of this second period may seem, the law has deemed it wise to establish a period of five years to be reckoned from the year following the date on which the plaintiff became aware of the cause of action for the filing of the action for divorce, that is, August 1, 1924. Therefore, it is contrary both to the letter and to the spirit of the law to hold that the action for divorce has prescribed because it was instituted two and a half years after the plaintiff became aware of the cause of action.

With respect to the second ground for dismissal, the judgment appealed from cites the case of Ocampo vs. Jenkins and Worcester (14 Phil., 681), wherein it was held: The fact that an appeal is pending in the Supreme Court in a criminal case for libel, under Act No. 277 of the Philippine Commission, does not prevent the prosecution of a civil action for damages under the same Act, which clearly recognizes two distinct actions, upon the theory that there are two separate and distinct injuries received from the crime, one by the State and the other by the individual damaged by the libel. In such a case, therefore, a petition for a writ of prohibition enjoining the prosecution of the civil suit while the criminal appeal is pending, will be denied.

"The general rule is that the plea of res adjudicata cannot be interposed except where the parties, the facts, and the questions involved are the same. As between civil and criminal actions, a judgment in one is no bar to the prosecution of the other. Hence, a judgment in a criminal cause cannot be pleaded as res adjudicata in a civil action."

That case dealt with the interpretation of section 11 of Act No. 277, which reads:

"In addition to the criminal action hereby prescribed, a right of civil action is also hereby given to any person libeled * * * against the person libeling him for damages sustained by such libel * * *"

And it was held that Act No. 277 recognized two distinct and independent actions on the theory that two distinct and independent injuries are caused by the crime of libel—one to the State and another to the private individual, prejudiced by reason of the crime. The rule adopted was substantially enunciated as follows:

"A judgment in a criminal prosecution constitutes no bar or estoppel in a civil action based upon the same acts or transactions, and conversely of a judgment in a civil action sought to be given in evidence in a criminal prosecution. The reason most often given for this holding is that the two proceedings are not between the same parties. Different rules as to the competency of witnesses and weight of evidence necessary to the findings in the two proceedings also exist. As between civil and criminal actions, a judgment in one is no bar or estoppel to the prosecution of the other. A judgment in a criminal cause cannot be pleaded as res judicata in a civil

action."

There is no need to amass citations in support of the general rule thus stated, since there can be no doubt that it is well founded upon justice and authority. Nevertheless, I believe that this general rule with respect to a civil action for libel and the criminal action arising therefrom, is not applicable to the instant case, wherein the civil action for divorce is so closely linked to the criminal action for adultery that the very life of the former depends upon the success of the latter. While a judgment of acquittal in a criminal case for libel is no bar to the institution of a civil action for damages caused by the libel, a judgment of acquittal for adultery kills the action for divorce. While, pursuant to Act No. 277, the civil action may be commenced and prosecuted until the rendering of judgment independently of the criminal action; under Act No. 2710, the action for divorce cannot be prosecuted, although it may be commenced, until judgment is rendered in the criminal action for adultery or concubinage.

And this shows the intimate relation established by the law between the civil action for divorce and the criminal action for adultery or concubinage.

Section 3 of the Divorce Law provides:

"The divorce may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage, as the case may be. Where both spouses are guilty, a divorce cannot be claimed by either of them."

And section 8 of the same Act prescribes:

"A divorce shall not be granted without the guilt of the defendant being established by final sentence in a criminal action."

In view of these legal provisions, I am of opinion that the judgment rendered in the action for adultery, Exhibit B, is conclusive proof of the defendant's guilt in the civil action for divorce, which is an indispensable requisite for the granting of a divorce.

On the hypothesis that the plaintiff has proved his allegations in the complaint for divorce, and having filed his action within the period authorized by the law, I am of the opinion that the lower court committed an error prejudicial to the appellant's rights in dismissing the present action; and I hold that the judgment appealed from should be reversed, and the case remanded to the court of origin with instruction to grant the divorce applied for in the complaint, in accordance with Act No. 2710, without a special pronouncement as to costs.

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