

**AURELIA DADIVAS DE VILLANUEVA, PLAINTIFF AND APPELLANT,
VS. RAFAEL VILLANUEVA, DEFENDANT AND APPELLEE.***G.R. No. 29959. December 03, 1929*

Ponente: STREET, J.

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This action was instituted on May 27, 1927, in the Court of First Instance of the City of Manila by Aurelia Dadivas de Villanueva against her husband, Rafael Villanueva, for the purpose of obtaining separate maintenance and custody of the two younger minor children, Guillenno and Sergio Villanueva, as well as a proper allowance for professional legal services rendered by the plaintiff's attorneys in this action, as well as costs. Upon hearing the cause the trial court absolved the defendant from the complaint and abrogated a prior order of the court for maintenance pendente lite, with costs against the plaintiff. From this judgment the plaintiff appealed.

The plaintiff, Aurelia Dadivas de Villanueva, was married to the defendant, Rafael Villanueva, on July 16, 1905, in the City of Manila, where the pair have since resided. To them have been born three children, namely, Antonio, Guillermo, and Sergio, who were, at the time of the trial of this case in the lower court, aged respectively 18, 10 and 9 years. The grounds on which separate maintenance is sought are infidelity and cruelty. With respect to the first of these charges the proof shows that during the period of about ten years prior to the institution of the action, the defendant was guilty of repeated acts of infidelity with four different women, and even after the action was begun, he is shown to have had illicit relations with still another, an incident which is incorporated in the case by means of the amended complaint. Though at all times protesting against these irregularities in her husband's conduct, the plaintiff appears to have exhibited forbearance; and she long continued in marital relations with him with a view to keeping the family intact as well as with hope of retrieving him from his erring course. In the end, however, the incorrigible nature of the defendant in his relations with other Women, coupled with a lack of consideration and even brutality towards the plaintiff, caused her to withdraw from the domestic hearth and to establish a separate abode for herself and two younger children. This final separation occurred on April 20, 1927, about one month before the present action was begun.

The proof with respect to the charge of cruelty shows that the defendant has not infrequently treated the plaintiff roughly and that he has at times directed abusive words to her and challenged her to carry her troubles into court. The proof in support of this charge does not in our opinion establish a case for separate maintenance, without relation to the graver charge of conjugal infidelity; and if the case depended, for its solution, upon cruelty alone, the case could doubtless be affirmed, in conformity with the doctrine stated in *Arroyo vs. Vazquez de Arroyo* (42 Phil., 54), where the charges of cruelty were found to be unproved or insufficient. In that case, however, we were able to record the fact that neither of the spouses had at any time been guilty of conjugal infidelity, and that neither had, so far as the proof showed, even given just cause to the other to suspect illicit relations with any person. In the case before us repeated acts of conjugal infidelity on the part of the husband are proved, and he appears to be a recurrent, if not an incurable offender against the sanctity of the marriage tie. This gives the wife an undeniable right to relief.

The law is not so unreasonable as to require a wife to live in marital relations with a husband whose incurable propensity towards other women makes common habitation with him unbearable. Deeply rooted instincts of human nature sanction the separation in such case, and the law is not so unreasonable as to require an acquiescence on the part of the injured party which is beyond the capacity of nature. In order to entitle a wife to maintain a separate home and to require separate maintenance from her husband it is not necessary that the husband should bring a concubine into the marital domicile. Perverse and illicit relations with women outside of the marital establishment are enough. As was said by Justice Moreland in *Goitia vs. Campos Rueda* (35 Phil., 252, 262), a husband cannot, by his own wrongful acts, relieve himself from the duty to support his wife imposed by law; and where a husband by wrongful, illegal, and unbearable conduct, drives his wife from the domicile fixed by him, he cannot take advantage of her departure to abrogate the law applicable to the marital relations and repudiate his duties thereunder.

In her complaint the plaintiff asks for an allowance of P750 per month, but we are of the opinion that the sum of P500 per month will suffice, this being in addition to the use which she makes for living quarters of a modest property belonging to the conjugal estate. During their marital life the spouses have acquired real estate which, at the time of the trial, was assessed at more than ₱85,000, and which at the same time was reasonably valued at more than ₱125,000. In addition to this the defendant appears to be now earning a substantial salary in commercial activities. The plaintiff is also entitled to an allowance for attorneys' fees which we fix at ₱1,000 for services rendered in the trial court and the same amount for services rendered in this court. It appears that the two younger children are now living with the plaintiff, and her right to their custody will not be disturbed. While this litigation was pending in the lower court the defendant was required to pay the amount of ₱500 per month for maintenance of the plaintiff, under an interlocutory order of June 15, 1927. But these payments ceased when the appealed decision was promulgated on or about the end of March, 1928. The plaintiff in this case is therefore entitled to judgment at the rate of ₱500 per month beginning April 1, 1928, until judgment shall be promulgated in this case, and from that date the defendant will be required to pay ₱500 per month for maintenance as already suggested. The plaintiff will also be awarded the sum of ₱720 in satisfaction of the amount paid out for the transcript necessary to this appeal.

The judgment is therefore reversed, and it is ordered that the plaintiff have and recover of the defendant the sum of ₱2,000 for attorneys' fees, the sum of ₱720 for expenses of procuring transcript, and the sum of ₱500 per month, beginning April 1, 1928, until the promulgation of this decision, after which date the defendant is ordered to pay to the plaintiff by way of maintenance, on or before the 10th day of each month, the sum of ₱500. So ordered, with costs against the appellee.

Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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