

NELLY LIM, PETITIONER, VS. THE COURT OF APPEALS, HON. MANUEL D. VICTORIO, AS PRESIDING JUDGE OF RTC-ROSALES, PANGASINAN, BRANCH 53, AND JUAN SIM, RESPONDENTS.

G.R. No. 91114. September 25, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This petition brings into focus the rule on the confidentiality of the physician-patient relationship. Petitioner urges this Court to strike down as being violative thereof the resolution of public respondent Court of Appeals in C.A.-G.R. SP No. 16991 denying due course to a petition to annul the order of the trial court allowing a Psychiatrist of the National Mental Hospital to testify as an expert witness and not as an attending physician of petitioner.

The parties are in agreement as to the following facts:

Petitioner and private respondent are lawfully married to each other.

On 25 November 1987, private respondent filed with Branch 53 of the Regional Trial Court (RTC) of Pangasinan a petition for annulment of such marriage on the ground that petitioner has been allegedly suffering from a mental illness called schizophrenia "before, during and after the marriage and until the present." After the issues were joined and the pre-trial was terminated, trial on the merits ensued. Private respondent presented three (3) witnesses before taking the witness stand himself to testify on his own behalf. On 11 January 1989, private respondent's counsel announced that he would present as his next witness the Chief of the Female Services of the National Mental Hospital, Dr. Lydia Acampado, a Doctor of Medicine who specializes in Psychiatry. Said counsel forthwith orally applied for the issuance of a subpoena ad testificandum requiring Dr. Acampado to testify on 25 January 1989. Petitioner's counsel opposed the motion on the ground that the testimony sought to be elicited from the witness is privileged since the latter had examined the petitioner in a professional capacity and had diagnosed her to be suffering from schizophrenia. Over such opposition, the subpoena was issued on 12 January 1989.

On 24 January 1989, petitioner's counsel filed an urgent omnibus motion to quash the subpoena and suspend the proceedings pending resolution of the motion.

Before Dr. Acampado took the witness stand on 25 January 1989, the court heard this urgent motion. Movant argued that having seen and examined the petitioner in a professional capacity, Dr. Acampado is barred from testifying under the rule on the confidentiality of a physician-patient relationship. Counsel for private respondent contended, however, that Dr. Acampado would be presented as an expert witness and would not testify on any information acquired while attending to the petitioner in a professional capacity. The trial court, per respondent Judge, denied the motion and allowed the witness to testify. Dr. Acampado thus took the witness stand, was qualified by counsel for private respondent as an expert witness and was asked by hypothetical questions related to her field of expertise. She neither revealed the illness she examined and treated the petitioner for nor disclosed

the results of her examination and the medicines she had prescribed.

Since petitioner's counsel insisted that the ruling of the court on the motion be reduced to writing, respondent Judge issued the following Order on the same date:

"In his omnibus motion filed with the Court only yesterday, January 24, 1989, petitioner seeks to prevent Dr. Lydia Acampado from testifying because she saw and examined respondent Nelly Lim in her professional capacity perforce her testimony is covered by the privileged (sic) communication rule.

Petitioner contends that Dr. Acampado is being presented as an expert witness and that she will not testify on any information she acquired in (sic) attending to Nelly Lim in her professional capacity.

Based on the foregoing manifestation of counsel for petitioner, the Court denied the respondent's motion and forthwith allowed Dr. Acampado to testify. However, the Court advised counsel for respondent to interpose his objection once it becomes apparent that the testimony sought to be elicited is covered by the privileged communication rule.

On the witness box, Dr. Acampado answered routinary (sic) questions to qualify her as an in psychiatry; she was asked to render an opinion as to what kind of illness (sic) are stelazine tablets applied to; she was asked to render an opinion on a (sic) hypothetical facts respecting certain behaviours of a person; and finally she admitted she saw and treated Nelly Lim but she never revealed what illness she examined and treated her (sic); nor (sic) the result of her examination of Nelly Lim; nor (sic) the medicines she prescribed.

WHEREFORE, the omnibus motion dated January 19, 1989 is hereby DENIED."[1]

On 3 March 1989, petitioner filed with the public respondent Court of Appeals a petition[2] for certiorari and prohibition, docketed therein as C.A.-G.R. SP N. 16991, to annul the aforesaid order of respondent Judge on the ground that the same was issued with grave abuse of discretion amounting to lack of jurisdiction, and to prohibit him from proceeding with the reception of Dr. Acampado's testimony.

On 18 September 1989, the Court of Appeals promulgated a resolution[3] denying due course to the petition on the ground that "the petitioner failed in establishing the confidential nature of the testimony given by or obtained from Dr. Acampado when she testified on January 25, 1969." Hence, the respondent Judge committed no grave abuse of discretion. In support thereof, the respondent Court discussed the conditions which would render as inadmissible testimonial evidence between a physician and his patient under paragraph (c), Section 24, Rule 130 of the Revised Rules of Court and made the following findings:

"The present suit is a civil case for annulment of marriage, and the person whose testimony is sought to be stopped as a privileged communication is a physician, who was summoned by the patient in her professional capacity for curative remedy or treatment. The divergence in views is whether the information given by the physician in her testimony in open court on January 25, 1989 was a privileged communication. We are of the opinion that they do not fall within the realm of a privileged communication because the information were (sic) not obtained from the patient while attending her in her professional capacity; and neither were (sic) the information necessary to enable the physician to prescribe or give treatment to the patient, Nelly Lim. And neither does the information obtained from the physician tend to blacken the character of the patient or bring disgrace to her or invite reproach. Dr. Acampado is a Medical Specialist II and incharge (sic) of the Female Service of the National Center for Mental Health, a fellow of the Philippine Psychiatrist Association and a Diplomate of the Philippine Board of Psychiatrists. She was summoned to testify as an expert witness and not as an attending physician of petitioner.

After a careful scrutiny of the transcript of Dr. Acampado's testimony, We find no declaration that touched (sic) or disclosed any information which she has acquired from her patient, Nelly Lim, during the period she attended her patient in a professional capacity. Although she testified that she examined and interviewed the

patient, she did not disclose anything she obtained in the course of her examination, interview and treatment of her patient. Given a set of facts and asked a hypothetical question, Dr. Acampado rendered an opinion regarding the history and behaviour of the fictitious character in the hypothetical problem. The facts and conditions alleged in the hypothetical problem did not refer and (sic) had no bearing to (sic) whatever information or findings the doctor obtained from attending the (sic) patient. A physician is not disqualified to testify as an expert concerning a patient's ailment, when he can disregard knowledge acquired in attending such patient and make answer solely on facts related in (sic) the hypothetical question. (Butler vs. Role, 242 Pac. 436; Supreme Court of Arizona, Jan. 7, 1926). Expert testimony of a physician based on hypothetical question (sic) as to cause of illness of a person whom he has attended is not privileged, provided the physician does not give testimony tending to disclose confidential information related to him in his professional capacity while attending to the patient. (Crago vs. City of Cedar Rapids, 98 NW 354; see Jones on Evidence, Vol. 3, p. 843, 3rd Ed.).

The rule on privilege (sic) communication in the relation of physician and patient proceeds from the fundamental assumption that the communication to deserve protection must be confidential in their origin. Confidentiality is not to be blindly implied from the mere relation of physician and patient. It might be implied according to circumstances of each case, taking into consideration the nature of the ailment and the occasion of the consultation. The claimant of the privilege has the burden of establishing in each instance all the facts necessary to create the privilege, including the confidential nature of the information given."[4]

Her motion to reconsider the resolution having been denied, petitioner took this recourse under Rule 45 of the Rules of Court. In her view, the respondent Court of Appeals "seriously erred":

"I.

x x x in not finding that all the essential elements of the rule on physician-patient privileged communication under Section 21, Rule 130 of the Rules of Court (Section 24, Rule 130 of the Revised Rules of Evidence) exist in the case at bar.

II.

x x x in believing that Dr. Acampado 'was summoned as an expert witness and not as an attending physician of petitioner.'

III.

x x x in concluding that Dr. Acampado made 'no declaration that touched (sic) or disclosed any information which she has acquired from her patient, Nelly Lim, during the period she attended her patient in a professional capacity.'

IV.

x x x in declaring that 'the petitioner failed in establishing the confidential nature of the testimony given by or obtained from Dr. Acampado.'"[5]

We gave due course to the petition and required the parties to submit their respective Memoranda[6] after the private respondent filed his Comment[7] and the petitioner submitted her reply[8] thereto. The parties subsequently filed their separate Memoranda.

The petition is devoid of any merit. Respondent Court of Appeals committed no reversible error in its challenged resolution.

The law in point is paragraph (c), Section 24 of the Revised Rules on Evidence which reads:

"SEC. 24. Disqualification by reason of privileged communication. -- The following persons cannot testify as to matters learned in confidence in the following cases:

x x x

(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient."

This is a reproduction of paragraph (c), Section 21, Rule 130 of the 1964 Revised Rules of Court with two (2) modifications, namely: (a) the inclusion of the phrase "advice or treatment given by him," and (b) substitution of the word reputation for the word character. Said Section 21 in turn is a reproduction of paragraph (f), Section 26, Rule 123 of the 1940 Rules of Court with a modification consisting in the change of the phrase "which would tend to blacken" in the latter to "would blacken." [9] Verily, these changes affected the meaning of the provision. Under the 1940 Rules of Court, it was sufficient if the information would tend to blacken the character of the patient. In the 1964 Rules of Court, a stricter requirement was imposed; it was imperative that the information would blacken such character. With the advent of the Revised Rules on Evidence on July 1989, the rule was relaxed once more by the substitution of the word character with the word reputation. There is a distinction between these two concepts. "'Character' is what a man is, and 'reputation' is what he is supposed to be in what people say he is. 'Character' depends on attributes possessed, and 'reputation' on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present." [10]

This rule on the physician-patient privilege is intended to facilitate and make safe full and confidential disclosure by the patient to the physician of all facts, circumstances and symptoms, untrammelled by apprehension of their subsequent and enforced disclosure and publication on the witness stand, to the end that the physician may form a correct opinion, and be enabled safely and efficaciously to treat his patient. [11] It rests in public policy and is for the general interest of the community. [12]

Since the object of the privilege is to protect the patient, it may be waived if no timely objection is made to the physician's testimony. [13]

In order that the privilege may be successfully claimed, the following requisites must concur:

- "1. the privilege is claimed in a civil case;
2. the person against whom the privilege is claimed is one duly authorized to practice medicine, surgery or obstetrics;
3. such person acquired the information while he was attending to the patient in his professional capacity;
4. the information was necessary to enable him to act in that capacity; and
5. the information was confidential, and, if disclosed, would blacken the reputation (formerly character) of the patient." [14]

These requisites conform with the four (4) fundamental conditions necessary for the establishment of a privilege against the disclosure of certain communications, to wit:

- "1. The communications must originate in a confidence that they will not be disclosed.
2. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.

3. The relation must be one which in the opinion of the community ought to be sedulously fostered.
4. The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.”[15]

The physician may be considered to be acting in his professional capacity when he attends to the patient for curative, preventive, or palliative treatment. Thus, only disclosures which would have been made to the physician to enable him "safely and efficaciously to treat his patient" are covered by the privilege.[16] It is to be emphasized that "it is the tenor only of the communication that is privileged. The mere fact of making a communication, as well as the date of a consultation and the number of consultations, are therefore not privileged from disclosure, so long as the subject communicated is not stated.”[17]

One who claims this privilege must prove the presence of these aforementioned requisites.[18]

Our careful evaluation of the submitted pleadings leads Us to no other course of action but to agree with the respondent Court's observation that the petitioner failed to discharge that burden. In the first place, Dr. Acampado was presented and qualified as an expert witness. As correctly held by the Court of Appeals, she did not disclose anything obtained in the course of her examination, interview and treatment of the petitioner; moreover, the facts and conditions alleged in the hypothetical problem did not refer to and had no bearing on whatever information or findings the doctor obtained while attending to the patient. There is, as well, no showing that Dr. Acampado's answers to the questions propounded to her relating to the hypothetical problem were influenced by the information obtained from the petitioner. Otherwise stated, her expert opinion excluded whatever information or knowledge she had about the petitioner which was acquired by reason of the physician-patient relationship existing between them. As an expert witness, her testimony before the trial court cannot then be excluded. The rule on this point is summarized as follows:

"The predominating view, with some scant authority otherwise, is that the statutory physician-patient privilege, though duly claimed, is not violated by permitting a physician to give expert opinion testimony in response to a strictly hypothetical question in a lawsuit involving the physical mental condition of a patient whom he has attended professionally, where his opinion is based strictly upon the hypothetical facts stated, excluding and disregarding any personal professional knowledge he may have concerning such patient. But in order to avoid the bar of the physician-patient privilege where it is asserted in such a case, the physician must base his opinion solely upon the facts hypothesized in the question, excluding from consideration his personal knowledge of the patient acquired through the physician and patient relationship. If he cannot or does not exclude from consideration his personal professional knowledge of the patient's condition he should not be permitted to testify as to his expert opinion.”[19]

Secondly, it is quite clear from Dr. Acampado's testimony that the petitioner was never interviewed alone. Said interviews were always conducted in the presence of a third party, thus:

"Q - I am asking you, doctor, whom did you interview?

A - I interviewed the husband first, then the father and after having the history, I interviewed the patient, Nelly.

Q - How many times did Juan Sim and Nelly Lim go to your office?

A - Now, the two (2) of them came three (3) times. As I have stated before, once in the month of April of 1987 and two (2) times for the month of June 1987, and after that, since July of 1987, it was the father of Nelly, Dr. Lim, who was bringing Nelly to me until November of 1987.

Q - Now, Dr. Lim is a fellow physician?

A - Yes, I understand.

Q - Was there anything that he told you when he visited with you in a clinic?

A - I would say that there was none. Even if I asked information about Nelly, I could not get anything from Dr. Lim.

Q - Now, when Dr. Lim and his daughter went to your clinic, was there any doctor who was also present during that interview?

A - No, sir, I don't remember any.”[20]

There is authority to the effect that information elicited during consultation with a physician in the presence of third parties removes such information from the mantle of the privilege:

“Some courts have held that the casual presence of a third person destroys the confidential nature of the communication between doctor and patient and thus destroys the privilege, and that under such circumstances the doctor may testify. Other courts have reached a contrary result.”[21]

Thirdly, except for the petitioner's sweeping claim -- that "(T)he information given by Dr. Acampado brings disgrace and invite (sic) reproach to petitioner by falsely making it appear in the eyes of the trial court and the public that the latter was suffering from a mental disturbance called schizophrenia -- which caused, and continues to cause, irreparable injury to the name and reputation of petitioner and her family,”[22] -- which is based on a wrong premise, nothing specific or concrete was offered to show that indeed, the information obtained from Dr. Acampado would blacken the former's "character" (or "reputation"). Dr. Acampado never disclosed any information obtained from the petitioner regarding the latter's ailment and the treatment recommended therefor.

Finally, while it may be true that counsel for the petitioner opposed the oral request for the issuance of a subpoena ad testificandum to Dr. Acampado and filed a formal motion for the quashal of the said subpoena a day before the witness was to testify, the petitioner makes no claim in any of her pleadings that her counsel had objected to any question asked of the witness on the ground that it elicited an answer that would violate the privilege, despite the trial court's advise that said counsel may interpose his objection to the testimony once it becomes apparent that the testimony, sought to be elicited is covered by the privileged communication rule." The particular portions of the stenographic notes of the testimony of Dr. Acampado quoted in the petitioner's Petition[23] and Memorandum,[24] and in the private respondent's Memorandum,[25] do not at all show that any objections were interposed. Even granting ex gratia that the testimony of Dr. Acampado could be covered by the privilege, the failure to seasonably object thereto amounted to a waiver thereof.

WHEREFORE, the instant petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Gutierrez, Jr., J., (Chairman), on official leave.

Bidin, (Acting Chairman), Romero, and Melo, JJ., concur.

[1] Rollo, 34.

[2] Id., 41-58.

[3] Id., 33-38; per then Associate Justice Jose C. Campos, Jr., concurred in by Associate Justices Emeterio C. Cui and Nicolas P. Lapeña, Jr.

[4] Rollo, 36-37.

- [5] Rollo, 14-15.
- [6] Id., 99.
- [7] Id., 84-89.
- [8] Id., 94-97.
- [9] FRANCISCO, V.J., The Revised Rules of Court, Vol. VII, Part I, 1973 ed., 248.
- [10] Black's Law Dictionary, Fifth ed., 211.
- [11] FRANCISCO, op. cit., 267, citing Will of Bruendi, 102 Wis., 47, 78 N.W. 169.
- [12] 61 Am Jur 2d, 263.
- [13] Wharton's Criminal Evidence, vol. III, 12th ed., 1955, 175-176.
- [14] FRANCISCO, op. cit., 268; MORAN, M.V., Comments on the Rules of Court, vol. 5, Part I, 1980 ed., 199.
- [15] WIGMORE, Evidence In Trials at Common Law, vol. VIII, 1961 ed., 527.
- [16] FRANCISCO, op. cit., 269, citing Smart vs. Kansas City, 208 Mo. 162, 105 S.W., 709; Rule 220, Model Code of Evidence.
- [17] WIGMORE, op. cit., 846.
- [18] Id., 833.
- [19] Am Jur 2d, 277-278; citations omitted.
- [20] TSN, 25 January 1989, 33-36, quoted in the Memorandum for Private Respondent; Rollo, 108-109.
- [21] Underhill's Criminal Evidence, Vol. II, Fifth ed., 1956, 853.
- [22] Rollo, op. cit., 26.
- [23] Rollo, 18-25.
- [24] Id., 121-128.
- [25] Id., 106-110.

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