

GASHEM SHOOKAT BAKSH, PETITIONER, VS. HON. COURT OF APPEALS AND MARILOU T. GONZALES, RESPONDENTS.*G.R. No. 97336. February 19, 1993*

Ponente: DAVIDE, JR., J.

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This is an appeal by certiorari under Rule 45 of the Rules of Court seeking to review and set aside the Decision^[1] of the respondent Court of Appeals in CA-G.R. CV No. 24256 which affirmed in toto the 16 October 1989 Decision of Branch 38 (Lingayen) of the Regional Trial Court (RTC) of Pangasinan in Civil Case No. 16503. Presented is the issue of whether or not damages may be recovered for a breach of promise to marry on the basis of Article 21 of the Civil Code of the Philippines.

The antecedents of this case are not complicated:

On 27 October 1987, private respondent, without the assistance of counsel, filed with the aforesaid trial court a complaint^[2] for damages against the petitioner for the alleged violation of their agreement to get married. She alleges in said complaint that: she is twenty-two (22) years old, single, Filipino and a pretty lass of good moral character and reputation duly respected in her community; petitioner, on the other hand, is an Iranian citizen residing at the Lozano Apartments, Guilig, Dagupan City, and is an exchange student taking a medical course at the Lyceum Northwestern Colleges in Dagupan City; before 20 August 1987, the latter courted and proposed to marry her; she accepted his love on the condition that they would get married; they therefore agreed to get married after the end of the school semester, which was in October of that year; petitioner then visited the private respondent's parents in Bañaga, Bugallon, Pangasinan to secure their approval to the marriage; sometime in 20 August 1987, the petitioner forced her to live with him in the Lozano Apartments; she was a virgin before she began living with him; a week before the filing of the complaint, petitioner's attitude towards her started to change; he maltreated and threatened to kill her; as a result of such maltreatment, she sustained injuries; during a confrontation with a representative of the barangay captain of Guilig a day before the filing of the complaint, petitioner repudiated their marriage agreement and asked her not to live with him anymore and; the petitioner is already married to someone living in Bacolod City. Private respondent then prayed for judgment ordering the petitioner to pay her damages in the amount of not less than P45,000.00, reimbursement for actual expenses amounting to P600.00, attorney's fees and costs, and granting her such other relief and remedies as may be just and equitable. The complaint was docketed as Civil Case No. 16503.

In his Answer with Counterclaim,^[3] petitioner admitted only the personal circumstances of the parties as averred in the complaint and denied the rest of the allegations either for lack of knowledge or information sufficient to form a belief as to the truth thereof or because the true facts are those alleged as his Special and Affirmative Defenses. He thus claimed that he never proposed marriage to or agreed to be married with the private respondent; he neither sought the consent and approval of her parents nor forced her to live in his apartment; he did not maltreat her, but only told her to stop coming to his place because he discovered that she had deceived him by stealing his money and passport; and finally, no confrontation took place with a representative of the barangay

captain. Insisting, in his Counterclaim, that the complaint is baseless and unfounded and that as a result thereof, he was unnecessarily dragged into court and compelled to incur expenses, and has suffered mental anxiety and a besmirched reputation, he prayed for an award of P5,000.00 for miscellaneous expenses and P25,000.00 as moral damages.

After conducting a pre-trial on 25 January 1988, the trial court issued a Pre-Trial Order[4] embodying the stipulated facts which the parties had agreed upon, to wit:

- "1. That the plaintiff is single and resident (sic) of Bañaga, Bugallon, Pangasinan, while the defendant is single, Iranian, citizen and resident (sic) of Lozano Apartment, Guilig, Dagupan City since September 1, 1987 up to the present;
2. That the defendant is presently studying at Lyceum-Northwestern, Dagupan City, College of Medicine, second year medicine proper.
3. That the plaintiff is (sic) an employee at Mabuhay Luncheonette, Fernandez Avenue, Dagupan City since July, 1986 up to the present and a (sic) high school graduate;
4. That the parties happened to know each other when the Manager of the Mabuhay Luncheonette, Johny Rabino introduced the defendant to the plaintiff on August 3, 1986."

After trial on the merits, the lower court, applying Article 21 of the Civil Code, rendered on 16 October 1989 a decision[5] favoring the private respondent. The petitioner was thus ordered to pay the latter damages and attorney's fees; the dispositive portion of the decision reads:

"IN THE LIGHT of the foregoing consideration, judgment is hereby rendered in favor of the plaintiff and against the defendant.

1. Condemning (sic) the defendant to pay the plaintiff the sum of twenty thousand (P20,000.00) pesos as moral damages.
2. Condemning further the defendant to pay the plaintiff the sum of three thousand (P3,000.00) pesos as atty's fees and two thousand (P2,000.00) pesos at (sic) litigation expenses and to pay the costs.
3. All other claims are denied."[6]

The decision is anchored on the trial court's findings and conclusions that (a) petitioner and private respondent were lovers, (b) private respondent is not a woman of loose morals or questionable virtue who readily submits to sexual advances, (c) petitioner, through machinations, deceit and false pretenses, promised to marry private respondent, (d) because of his persuasive promise to marry her, she allowed herself to be deflowered by him, (e) by reason of that deceitful promise, private respondent and her parents -- in accordance with Filipino customs and traditions -- made some preparations for the wedding that was to be held at the end of October 1987 by looking for pigs and chickens, inviting friends and relatives and contracting sponsors, (f) petitioner did not fulfill his promise to marry her and (g) such acts of the petitioner, who is a foreigner and who has abused Philippine hospitality, have offended our sense of morality, good customs, culture and traditions. The trial court gave full credit to the private respondent's testimony because, inter alia, she would not have had the temerity and courage to come to court and expose her honor and reputation to public scrutiny and ridicule if her claim was false.[7]

The above findings and conclusions were culled from the detailed summary of the evidence for the private respondent in the foregoing decision, digested by the respondent Court as follows:

"According to plaintiff, who claimed that she was a virgin at the time and that she never had a boyfriend before, defendant started courting her just a few days after they first met. He later proposed marriage to her

several times and she accepted his love as well as his proposal of marriage on August 20, 1987, on which same day he went with her to her hometown of Banaga, Bugallon, Pangasinan, as he wanted to meet her parents and inform them of their relationship and their intention to get married. The photographs Exhs. "A" to "E" (and their submarkings) of defendant with members of plaintiff's family or with plaintiff, were taken that day. Also on that occasion, defendant told plaintiff's parents and brothers and sisters that he intended to marry her during the semestral break in October, 1987, and because plaintiff's parents thought he was good and trusted him, they agreed to his proposal for him to marry their daughter, and they likewise allowed him to stay in their house and sleep with plaintiff during the few days that they were in Bugallon. When plaintiff and defendant later returned to Dagupan City, they continued to live together in defendant's apartment. However, in the early days of October, 1987, defendant would tie plaintiff's hands and feet while he went to school, and he even gave her medicine at 4 o'clock in the morning that made her sleep the whole day and night until the following day. As a result of this live-in relationship, plaintiff became pregnant, but defendant gave her some medicine to abort the foetus. Still plaintiff continued to live with defendant and kept reminding him of his promise to marry her until he told her that he could not do so because he was already married to a girl in Bacolod City. That was the time plaintiff left defendant, went home to her parents, and thereafter consulted a lawyer who accompanied her to the barangay captain in Dagupan City. Plaintiff, her lawyer, her godmother, and a barangay tanod sent by the barangay captain went to talk to defendant to still convince him to marry plaintiff, but defendant insisted that he could not do so because he was already married to a girl in Bacolod City, although the truth, as stipulated by the parties at the pre-trial, is that defendant is still single.

Plaintiff's father, a tricycle driver, also claimed that after defendant had informed them of his desire to marry Marilou, he already looked for sponsors for the wedding, started preparing for the reception by looking for pigs and chickens, and even already invited many relatives and friends to the forthcoming wedding."^[8]

Petitioner appealed the trial court's decision to the respondent Court of Appeals which docketed the case as CA-G.R. CV No. 24256. In his Brief,^[9] he contended that the trial court erred (a) in not dismissing the case for lack of factual and legal basis and (b) in ordering him to pay moral damages, attorney's fees, litigation expenses and costs.

On 18 February 1991, respondent Court promulgated the challenged decision^[10] affirming in toto the trial court's ruling of 16 October 1989. In sustaining the trial court's findings of fact, respondent Court made the following analysis:

"First of all, plaintiff, then only 21 years old when she met defendant who was already 29 years old at the time, does not appear to be a girl of loose morals. It is uncontradicted that she was a virgin prior to her unfortunate experience with defendant and never had a boyfriend. She is, as described by the lower court, a barrio lass 'not used and accustomed to the trend of modern urban life', and certainly would (sic) not have allowed 'herself to be deflowered by the defendant if there was no persuasive promise made by the defendant to marry her.' In fact, we agree with the lower court that plaintiff and defendant must have been sweethearts or so the plaintiff must have thought because of the deception of defendant, for otherwise, she would not have allowed herself to be photographed with defendant in public in so (sic) loving and tender poses as those depicted in the pictures Exhs. "D" and "E". We cannot believe, therefore, defendant's pretense that plaintiff was a nobody to him except a waitress at the restaurant where he usually ate. Defendant in fact admitted that he went to plaintiff's hometown of Banaga, Bugallon, Pangasinan, at least thrice; at (sic) the town fiesta on February 27, 1987 (p. 54, tsn May 18, 1988), at (sic) a beach party together with the manager and employees of the Mabuhay Lancheonette on March 3, 1987 (p. 50, tsn id.), and on April 1, 1987 when he allegedly talked to plaintiff's mother who told him to marry her daughter (pp. 55-56, tsn id.). Would defendant have left Dagupan City where he was involved in the serious study of medicine to go to plaintiff's hometown in Bañaga, Bugallon, unless there was (sic) some kind of special relationship between them? And this special relationship must indeed have led to defendant's insincere proposal of marriage to plaintiff, communicated not only to her but also to her parents, and (sic) Marites Rabino, the owner of the restaurant where plaintiff was working and

where defendant first proposed marriage to her, also knew of this love affair and defendant's proposal of marriage to plaintiff, which she declared was the reason why plaintiff resigned from her job at the restaurant after she had accepted defendant's proposal (pp. 6-7, tsn March 7, 1988).

Upon the other hand, appellant does not appear to be a man of good moral character and must think so low and have so little respect and regard for Filipino women that he openly admitted that when he studied in Bacolod city for several years where he finished he B.S. Biology before he came to Dagupan City to study medicine, he had a common-law wife in Bacolod City. In other words, he also lived with another woman in Bacolod City but did not marry that woman, just like what he did to plaintiff. It is surprising, then, that he felt so little compunction or remorse in pretending to love and promising to marry plaintiff, a young, innocent, trustful country girl, in order to satisfy his lust on her.”[11]

and then concluded:

“In sum, we are strongly convinced and so hold that it was defendant-appellant's fraudulent and deceptive protestations of love for and promise to marry plaintiff that made her surrender her virtue and womanhood to him and to live with him on the honest and sincere belief that he would keep said promise, and it was likewise these (sic) fraud and deception on appellant's part that made plaintiff's parents agree to their daughter's living-in with him preparatory to their supposed marriage. And as these acts of appellant are palpably and undoubtedly against morals, good customs, and public policy, and are even gravely and deeply derogatory and insulting to our women, coming as they do from a foreigner who has been enjoying the hospitality of our people and taking advantage of the opportunity to study in one of our institutions of learning, defendant-appellant should indeed be made, under Art. 21 of the Civil Code of the Philippines, to compensate for the moral damages and injury that he had caused plaintiff, as the lower court ordered him to do in its decision in this case.”[12]

Unfazed by his second defeat, petitioner filed the instant petition on 26 March 1991; he raises therein the single issue of whether or not Article 21 of the Civil Code applies to the case at bar.[13]

It is petitioner's thesis that said Article 21 is not applicable because he had not committed any moral wrong or injury or violated any good custom or public policy; he has not professed love or proposed marriage to the private respondent; and he has never maltreated her. He criticizes the trial court for liberally invoking Filipino customs, traditions and culture, and ignoring the fact that since he is a foreigner, he is not conversant with such Filipino customs, traditions and culture. As an Iranian Moslem, he is not familiar with Catholic and Christian ways. He stresses that even if he had made a promise to marry, the subsequent failure to fulfill the same is excusable or tolerable because of his Moslem upbringing; he then alludes to the Muslim Code which purportedly allows a Muslim to take four (4) wives and concludes that on the basis thereof, the trial court erred in ruling that he does not possess good moral character. Moreover, his controversial "common law wife" is now his legal wife as their marriage had been solemnized in civil ceremonies in the Iranian Embassy. As to his unlawful cohabitation with the private respondent, petitioner claims that even if responsibility could be pinned on him for the live-in relationship, the private respondent should also be faulted for consenting to an illicit arrangement. Finally, petitioner asseverates that even if it was to be assumed *arguendo* that he had professed his love to the private respondent and had also promised to marry her, such acts would not be actionable in view of the special circumstances of the case. The mere breach of promise is not actionable.[14]

On 26 August 1991, after the private respondent had filed her Comment to the petition and the petitioner had filed his Reply thereto, this Court gave due course to the petition and required the parties to submit their respective Memoranda, which they subsequently complied with.

As may be gleaned from the foregoing summation of the petitioner's arguments in support of his thesis, it is clear that questions of fact, which boil down to the issue of the credibility of witnesses, are also raised. It is the rule in

this jurisdiction that appellate courts will not disturb the trial court's findings as to the credibility of witnesses, the latter court having heard the witnesses and having had the opportunity to observe closely their deportment and manner of testifying, unless the trial court had plainly overlooked facts of substance or value which, if considered, might affect the result of the case.[15]

Petitioner has miserably failed to convince Us that both the appellate and trial courts had overlooked any fact of substance or value which could alter the result of the case.

Equally settled is the rule that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. It is not the function of this Court to analyze or weigh all over again the evidence introduced by the parties before the lower court. There are, however, recognized exceptions to this rule. Thus, in *Medina vs. Asistio, Jr.*, [16] this Court took the time, again, to enumerate these exceptions:

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“(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (*Joaquin v. Navarro*, 93 Phil. 257 [1953]); (2) When the inference made is manifestly mistaken, absurd or impossible (*Luna v. Linatok*, 74 Phil. 15 [1942]); (3) Where there is a grave abuse of discretion (*Buyco v. People*, 95 Phil. 453 [1955]); (4) When the judgment is based on a misapprehension of facts (*Cruz v. Sosing*, L-4875, Nov. 27, 1953); (5) When the findings of fact are conflicting (*Casica v. Villaseca*, L-9590 Ap. 30, 1957; unrep.) (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee (*Evangelista v. Alto Surety and Insurance Co.*, 103 Phil. 401 [1958]); (7) The findings of the Court of Appeals are contrary to those of the trial court (*Garcia v. Court of Appeals*, 33 SCRA 622 [1970]; *Sacay v. Sandiganbayan*, 142 SCRA 593 [1986]); (8) When the findings of fact are conclusions without citation of specific evidence on which they are based (*Ibid.*,); (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents (*Ibid.*,); and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record (*Salazar v. Gutierrez*, 33 SCRA 242 [1970]).”

Petitioner has not endeavored to point out to Us the existence of any of the above quoted exceptions in this case. Consequently, the factual findings of the trial and appellate courts must be respected.

And now to the legal issue.

The existing rule is that a breach of promise to marry per se is not an actionable wrong.[17] Congress deliberately eliminated from the draft of the New Civil Code the provisions that would have made it so. The reason therefor is set forth in the report of the Senate Committee on the Proposed Civil Code, from which We quote:

“The elimination of this chapter is proposed. That breach of promise to marry is not actionable has been definitely decided in the case of *De Jesus vs. Syquia*. [18] The history of breach of promise suits in the United States and in England has shown that no other action lends itself more readily to abuse by designing women and unscrupulous men. It is this experience which has led to the abolition of rights of action in the so-called Heart Balm suits in many of the American states” [19]

This notwithstanding, the said Code contains a provision, Article 21, which is designed to expand the concept of torts or quasi-delict in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically enumerate and punish in the statute books.[20]

As the Code Commission itself stated in its Report:

“But the Code Commission has gone farther than the sphere of wrongs defined or determined by positive law. Fully sensible that there are countless gaps in the statutes, which leave so many victims of moral wrongs helpless, even though they have actually suffered material and moral injury, the Commission has deemed it

necessary, in the interest of justice, to incorporate in the proposed Civil Code the following rule:

'ART. 23. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.'

'An example will illustrate the purview of the foregoing norm: 'A' seduces the nineteen-year old daughter of 'X.' A promise of marriage either has not been made, or can not be proved. The girl becomes pregnant. Under the present laws, there is no crime, as the girl is above eighteen years of age. Neither can any civil action for breach of promise of marriage be filed. Therefore, though the grievous moral wrong has been committed, and though the girl and her family have suffered incalculable moral damage, she and her parents cannot bring any action for damages. But under the proposed article, she and her parents would have such a right of action.

Thus at one stroke, the legislator, if the foregoing rule is approved, would vouchsafe adequate legal remedy for that untold number of moral wrongs which it is impossible for human foresight to provide for specifically in the statutes."^[21]

Article 2176 of the Civil Code, which defines a quasi-delict thus:

"Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

is limited to negligent acts or omissions and excludes the notion of willfulness or intent. Quasi-delict, known in Spanish legal treatises as culpa aquiliana, is a civil law concept while torts is an Anglo-American or common law concept. Torts is much broader than culpa aquiliana because it includes not only negligence, but intentional criminal acts as well such as assault and battery, false imprisonment and deceit. In the general scheme of the Philippine legal system envisioned by the Commission responsible for drafting the New Civil Code, intentional and malicious acts, with certain exceptions, are to be governed by the Revised Penal Code while negligent acts or omissions are to be covered by Article 2176 of the Civil Code.^[22] In between these opposite spectrums are injurious acts which, in the absence of Article 21, would have been beyond redress. Thus, Article 21 fills that vacuum. It is even postulated that together with Articles 19 and 20 of the Civil Code, Article 21 has greatly broadened the scope of the law on civil wrongs; it has become much more supple and adaptable than the Anglo-American law on torts.^[23]

In the light of the above laudable purpose of Article 21, We are of the opinion, and so hold, that where a man's promise to marry is in fact the proximate cause of the acceptance of his love by a woman and his representation to fulfill that promise thereafter becomes the proximate cause of the giving of herself unto him in a sexual congress, proof that he had, in reality, no intention of marrying her and that the promise was only a subtle scheme or deceptive device to entice or inveigle her to accept him and to obtain her consent to the sexual act, could justify the award of damages pursuant to Article 21 not because of such promise to marry but because of the fraud and deceit behind it and the willful injury to her honor and reputation which followed thereafter. It is essential, however, that such injury should have been committed in a manner contrary to morals, good customs or public policy.

In the instant case, respondent Court found that it was the petitioner's "fraudulent and deceptive protestations of love for and promise to marry plaintiff that made her surrender her virtue and womanhood to him and to live with him on the honest and sincere belief that he would keep said promise, and it was likewise these fraud and deception on appellant's part that made plaintiff's parents agree to their daughter's living-in with him preparatory to their supposed marriage."^[24] In short, the private respondent surrendered her virginity, the cherished possession of every single Filipina, not because of lust but because of moral seduction -- the kind illustrated by

the Code Commission in its example earlier adverted to. The petitioner could not be held liable for criminal seduction punished under either Article 337 or Article 338 of the Revised Penal Code because the private respondent was above eighteen (18) years of age at the time of the seduction.

Prior decisions of this Court clearly suggest that Article 21 may be applied in a breach of promise to marry where the woman is a victim of moral seduction. Thus, in *Hermosisima vs. Court of Appeals*,^[25] this Court denied recovery of damages to the woman because:

"x x x we find ourselves unable to say that petitioner is morally guilty of seduction, not only because he is approximately ten (10) years younger than the complainant -- who was around thirty-six (36) years of age, and as highly enlightened as a former high school teacher and a life insurance agent are supposed to be -- when she became intimate with petitioner, then a mere apprentice pilot, but, also, because the court of first instance found that, complainant 'surrendered herself' to petitioner because, 'overwhelmed by her love' for him, she 'wanted to bind' him 'by having a fruit of their engagement even before they had the benefit of clergy.'"

In *Tanjanco vs. Court of Appeals*,^[26] while this Court likewise hinted at possible recovery if there had been moral seduction, recovery was eventually denied because We were not convinced that such seduction existed. The following enlightening disquisition and conclusion were made in the said case:

"The Court of Appeals seems to have overlooked that the example set forth in the Code Commission's memorandum refers to a tort upon a minor who had been seduced. The essential feature is seduction, that in law is more than mere sexual intercourse, or a breach of a promise of marriage; it connotes essentially the idea of deceit, enticement, superior power or abuse of confidence on the part of the seducer to which the woman has yielded (*U.S. vs. Buenaventura*, 27 Phil. 121; *U.S. vs. Arlante*, 9 Phil. 595).

It has been ruled in the *Buenaventura* case (*supra*) that --

"To constitute seduction there must in all cases be some sufficient promise or inducement and the woman must yield because of the promise or other inducement. If she consents merely from carnal lust and the intercourse is from mutual desire, there is no seduction (43 Cent. Dig. tit. Seduction, par. 56). She must be induced to depart from the path of virtue by the use of some species of arts, persuasions and wiles, which are calculated to have and do have that effect, and which result in her ultimately submitting her person to the sexual embraces of her seducer' (27 Phil. 123).

And in American Jurisprudence we find:

'On the other hand, in an action by the woman, the enticement, persuasion or deception is the essence of the injury; and a mere proof of intercourse is insufficient to warrant a recovery.

Accordingly it is not seduction where the willingness arises out of sexual desire or curiosity of the female, and the defendant merely affords her the needed opportunity for the commission of the act. It has been emphasized that to allow a recovery in all such cases would tend to the demoralization of the female sex, and would be a reward for unchastity by which a class of adventuresses would be swift to profit.' (47 Am. Jur. 662)

x x x

Over and above the partisan allegations, the facts stand out that for one whole year, from 1958 to 1959, the plaintiff-appellee, a woman of adult age, maintained intimate sexual relations with appellant, with repeated acts of intercourse. Such conduct is incompatible with the idea of seduction. Plainly there is here voluntariness and mutual passion; for had the appellant been deceived, had she surrendered exclusively because of the deceit, artful persuasions and wiles of the defendant, she would not have again yielded to his embraces, much less for one year, without exacting early fulfillment of the alleged promises of marriage, and would have cut short all sexual relations upon -finding that defendant did not intend to fulfill his promise. Hence, we conclude that no

case is made under Article 21 of the Civil Code, and no other cause of action being alleged, no error was committed by the Court of First Instance in dismissing the complaint.”[27]

In his annotations on the Civil Code,[28] Associate Justice Edgardo L. Paras, who recently retired from this Court, opined that in a breach of promise to marry where there had been carnal knowledge, moral damages may be recovered:

“x x x if there be criminal or moral seduction, but not if the intercourse was due to mutual lust. (*Hermosisima vs. Court of Appeals*, L-14628, Sept. 30, 1960; *Estopa vs. Piansay, Jr.*, L-14733, Sept. 30, 1960; *Batarra vs. Marcos*, 7 Phil. 56 (sic); *Beatriz Galang vs. Court of Appeals, et al.*, L-17248, Jan. 29, 1962). (In other words, if the CAUSE be the promise to marry, and the EFFECT be the carnal knowledge, there is a chance that there was criminal or moral seduction, hence recovery of moral damages will prosper. If it be the other way around, there can be no recovery of moral damages, because here mutual lust has intervened). x x x.”

together with “ACTUAL damages, should there be any, such as the expenses for the wedding preparations (See *Domalagon v. Bolifer*, 33 Phil. 471).”

Senator Arturo M. Tolentino[29] is also of the same persuasion:

“It is submitted that the rule in *Batarra vs. Marcos*[30] still subsists, notwithstanding the incorporation of the present article[31] in the Code. The example given by the Code Commission is correct, if there was seduction, not necessarily in the legal sense, but in the vulgar sense of deception. But when the sexual act is accomplished without any deceit or qualifying circumstance of abuse of authority or influence, but the woman, already of age, has knowingly given herself to a man, it cannot be said that there is an injury which can be the basis for indemnity.

But so long as there is fraud, which is characterized by wilfulness (sic), the action lies. The court, however, must weigh the degree of fraud, if it is sufficient to deceive the woman under the circumstances, because an act which would deceive a girl sixteen years of age may not constitute deceit as to an experienced woman thirty years of age. But so long as there is a wrongful act and a resulting injury, there should be civil liability, even if the act is not punishable under the criminal law and there should have been an acquittal or dismissal of the criminal case for that reason.”

We are unable to agree with the petitioner's alternative proposition to the effect that granting, for argument's sake, that he did promise to marry the private respondent, the latter is nevertheless also at fault. According to him, both parties are in *pari delicto*; hence, pursuant to Article 1412(1) of the Civil Code and the doctrine laid down in *Batarra vs. Marcos*,[32] the private respondent cannot recover damages from the petitioner. The latter even goes as far as stating that if the private respondent had “sustained any injury or damage in their relationship, it is primarily because of her own doing,”[33] for:

“x x x She is also interested in the petitioner as the latter will become a doctor sooner or later. Take notice that she is a plain high school graduate and a mere employee ... (Annex “C”) or a waitress (TSN, p. 51, January 25, 1988) in a luncheonette and without doubt, is in need of a man who can give her economic security. Her family is in dire need of financial assistance (TSN, pp. 51-53, May 18, 1988). And this predicament prompted her to accept a proposition that may have been offered by the petitioner.”[34]

These statements reveal the true character and motive of the petitioner. It is clear that he harbors a condescending, if not sarcastic, regard for the private respondent on account of the latter's ignoble birth, inferior educational background, poverty and, as perceived by him, dishonorable employment. Obviously then, from the very beginning, he was not at all moved by good faith and an honest motive. Marrying with a woman so circumstanced could not have even remotely occurred to him. Thus, his profession of love and promise to marry were empty words directly intended to fool, dupe, entice, beguile and deceive the poor woman into believing that indeed, he

loved her and would want her to be his life's partner. His was nothing but pure lust which he wanted satisfied by a Filipina who honestly believed that by accepting his proffer of love and proposal of marriage, she would be able to enjoy a life of ease and security. Petitioner clearly violated the Filipino's concept of morality and so brazenly defied the traditional respect Filipinos have for their women. It can even be said that the petitioner committed such deplorable acts in blatant disregard of Article 19 of the Civil Code which directs every person to act with justice, give everyone his due and observe honesty and good faith in the exercise of his rights and in the performance of his obligations.

No foreigner must be allowed to make a mockery of our laws, customs and traditions.

The *pari delicto* rule does not apply in this case for while indeed, the private respondent may not have been impelled by the purest of intentions, she eventually submitted to the petitioner in sexual congress not out of lust, but because of moral seduction. In fact, it is apparent that she had qualms of conscience about the entire episode for as soon as she found out that the petitioner was not going to marry her after all, she left him. She is not, therefore, in *pari delicto* with the petitioner. *Pari delicto* means "in equal fault; in a similar offense or crime; equal in guilt or in legal fault." [35] At most, it could be conceded that she is merely in *delicto*.

"Equity often interferes for the relief of the less guilty of the parties, where his transgression has been brought about by the imposition or undue influence of the party on whom the burden of the original wrong principally rests, or where his consent to the transaction was itself procured by fraud." [36]

In *Mangayao vs. Lasud*, [37] We declared:

"Appellants likewise stress that both parties being at fault, there should be no action by one against the other (Art. 1412, New Civil Code). This rule, however, has been interpreted as applicable only where the fault on both sides is, more or less, equivalent. It does not apply where one party is literate or intelligent and the other one is not (c.f. *Bough vs. Cantiveros*, 40 Phil. 209)."

We should stress, however, that while We find for the private respondent, let it not be said that this Court condones the deplorable behavior of her parents in letting her and the petitioner stay together in the same room in their house after giving approval to their marriage. It is the solemn duty of parents to protect the honor of their daughters and infuse upon them the higher values of morality and dignity.

WHEREFORE, finding no reversible error in the challenged decision, the instant petition is hereby DENIED, with costs against the petitioner.

SO ORDERED.

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

[*] Associate Justice Hugo E. Gutierrez, Jr., Chairman, is on terminal leave

[1] Annex "G" of Petition; Rollo, 53-62. Per Associate Justice Alicia V. Sempio-Diy, concurred in by Associate Justices Jose C. Campos, Jr. and Jaime M. Lantin.

[2] Annex "A" of Petition; Rollo, 20-22.

[3] Annex "B" of Petition; Rollo, 23-24.

[4] Annex "C", Id.; Id., 25.

[5] Annex "D" of Petition; Rollo, 26-33. Per Judge Antonio M. Belen.

[6] Id., 33.

[7] Rollo, 31-33.

[8] Rollo, 54-55.

[9] Exhibit "E" of Petition; Rollo, 34-50.

[10] Annex "G", Id.; Id., 53-62.

[11] Rollo, 58-59.

[12] Rollo, 61.

[13] Id., 11.

[14] In support thereof, he cites Despi vs. Aliososo, [CA] 64 O.G.; Wassmer vs. Velez, 12 SCRA 648 [1964]; Hermosisima vs. Court of Appeals, 109 Phil. 629 [1960]; and Estopa vs. Piansay, 109 Phil. 640 [1960].

[15] People vs. Garcia, 89 SCRA 440 [1979]; People vs. Bautista, 92 SCRA 465 [1979]; People vs. Abejuela, 92 SCRA 503 [1979]; People vs. Arciaga, 98 SCRA 1 [1980]; People vs. Marzan, 128 SCRA 203 [1984]; People vs. Alcid, 135 SCRA 280 [1985]; People vs. Sanchez, 199 SCRA 414 [1991]; and People vs. Atilano, 204 SCRA 278 [1991].

[16] 191 SCRA 218 [1990], footnote omitted; see also, Remalante vs. Tibe, 158 SCRA 138 [1988].

[17] Hermosisima vs. Court of Appeals, 109 Phil. 629 [1960]; Estopa vs. Piansay, 109 Phil. 640 [1960].

[18] 58 Phil. 866 [1933].

[19] Congressional Record, vol. IV, No. 79, Thursday, 14 May 1949, 2352.

[20] Philippine National Bank vs. Court of Appeals, 83 SCRA 237 [1978].

[21] Report of the Code Commission, 39-40. This passage is quoted, except for the last paragraph, in Tanjanco vs. Court of Appeals, 18 SCRA 994, 996-997 [1966]; the Article 23 referred to is now Article 21.

[22] Report of the Code Commission, 161-162.

[23] TOLENTINO, A.M., Commentaries and Jurisprudence on the Civil Code of the Philippines, vol. 1, 1985 ed., 72.

[24] Rollo, 61.

[25] Supra.

[26] Supra.

[27] At pages 997-999.

[28] Civil Code of the Philippines Annotated, vol. I, Eleventh ed., (1984), 91-92.

[29] Commentaries and Jurisprudence on the Civil Code of the Philippines, vol. 1, 1985 ed., 76-77, omitting footnotes.

[30] 7 Phil. 156 [1906].

[31] Article 21.

[32] Supra.

[33] Rollo, 16.

[34] Id., 16-17.

[35] Black's Law Dictionary, Fifth ed., 1004.

[36] 37 Am Jur 2d, 401, omitting citations.

[37] 11 SCRA 158 [1964]; see also, *Liguez vs. Court of Appeals*, 102 Phil. 577 [1957].

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