

FIRST DIVISION

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

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

D E C I S I O N

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. Ochoa 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. Ochoa 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