

## THIRD DIVISION

[ G.R. NO. 143439, October 14, 2005 ]

**MAXIMO ALVAREZ, PETITIONER, VS. SUSAN RAMIREZ,  
RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Before us is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> of the Court of Appeals dated May 31, 2000 in CA-G.R. SP No. 56154, entitled "Susan Ramirez, *petitioner, versus*, Hon. Benjamin M. Aquino, Jr., as Judge RTC, Malabon, MM, Br. 72, and Maximo Alvarez, *respondents*."

Susan Ramirez, herein respondent, is the complaining witness in Criminal Case No. 19933-MN for arson<sup>[3]</sup> pending before the Regional Trial Court, Branch 72, Malabon City. The accused is Maximo Alvarez, herein petitioner. He is the husband of Esperanza G. Alvarez, sister of respondent.

On June 21, 1999, the private prosecutor called Esperanza Alvarez to the witness stand as the first witness against petitioner, her husband. Petitioner and his counsel raised no objection.

Esperanza testified as follows:

"ATTY. ALCANTARA:

We are calling Mrs. Esperanza Alvarez, **the wife of the accused**,  
Your Honor.

COURT:

Swear in the witness.

x x x

ATTY. MESIAH: (sic)

Your Honor, we are offering the testimony of this witness for the purpose of proving that the accused Maximo Alvarez committed all the elements of the crime being charged particularly that accused Maximo Alvarez pour on May 29, 1998 gasoline in the house located at Blk. 5, Lot 9, Phase 1-C, Dagat-dagatan, Navotas, Metro Manila, the house owned by his sister-in-law Susan Ramirez; that accused Maximo Alvarez after pouring the gasoline on the door of the house of Susan Ramirez ignited and set it on fire; that the accused at the

time he successfully set the house on fire (sic) of Susan Ramirez knew that it was occupied by Susan Ramirez, the members of the family as well as **Esperanza Alvarez, the estranged wife of the accused**; that as a consequence of the accused in successfully setting the fire to the house of Susan Ramirez, the door of said house was burned and together with several articles of the house, including shoes, chairs and others.

COURT:

You may proceed.

x x x

DIRECT EXAMINATION

ATTY. ALCANTARA:

x x x

Q: When you were able to find the source, incidentally what was the source of that scent?

A: When I stand by the window, sir, I saw a man pouring the gasoline in the house of my sister (and witness pointing to the person of the accused inside the court room).

Q: For the record, Mrs. Witness, can you state the name of that person, if you know?

A: **He is my husband, sir, Maximo Alvarez.**

Q: If that Maximo Alvarez you were able to see, can you identify him?

A: Yes, sir.

Q: If you can see him inside the Court room, can you please point him?

A: Witness pointing to a person and when asked to stand and asked his name, he gave his name as Maximo Alvarez."<sup>[4]</sup>

In the course of Esperanza's direct testimony against petitioner, the latter showed "uncontrolled emotions," prompting the trial judge to suspend the proceedings.

On June 30, 1999, petitioner, through counsel, filed a motion<sup>[5]</sup> to disqualify Esperanza from testifying against him pursuant to Rule 130 of the Revised Rules of Court on marital disqualification.

Respondent filed an opposition<sup>[6]</sup> to the motion. Pending resolution of the motion, the trial court directed the prosecution to proceed with the presentation of the other witnesses.

On September 2, 1999, the trial court issued the questioned Order disqualifying Esperanza Alvarez from further testifying and deleting her testimony from the records.<sup>[7]</sup> The prosecution filed a motion for reconsideration but was denied in the other assailed Order dated October 19, 1999.<sup>[8]</sup>

This prompted respondent Susan Ramirez, the complaining witness in Criminal Case No. 19933-MN, to file with the Court of Appeals a petition for *certiorari*<sup>[9]</sup> with application for preliminary injunction and temporary restraining order.<sup>[10]</sup>

On May 31, 2000, the Appellate Court rendered a Decision nullifying and setting aside the assailed Orders issued by the trial court.

Hence, this petition for review on *certiorari*.

The issue for our resolution is whether Esperanza Alvarez can testify against her husband in Criminal Case No. 19933-MN.

Section 22, Rule 130 of the Revised Rules of Court provides:

"Sec. 22. Disqualification by reason of marriage. - During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants."

The reasons given for the rule are:

1. There is identity of interests between husband and wife;
2. If one were to testify for or against the other, there is consequent danger of perjury;
3. The policy of the law is to guard the security and confidences of private life, even at the risk of an occasional failure of justice, and to prevent domestic disunion and unhappiness; and
4. Where there is want of domestic tranquility there is danger of punishing one spouse through the hostile testimony of the other.<sup>[11]</sup>

But like all other general rules, the marital disqualification rule has its own exceptions, both in civil actions between the spouses and in criminal cases for offenses committed by one against the other. Like the rule itself, the exceptions are backed by sound reasons which, in the excepted cases, outweigh those in support of the general rule. For instance, where the marital and domestic relations are so strained that there is no more harmony to be preserved nor peace and tranquility which may be disturbed, the reason based upon such harmony and tranquility fails. In such a case, identity of interests disappears and the consequent danger of perjury based on that identity is non-existent. Likewise, in such a situation, the security and confidences of private life, which the law aims at protecting, will be nothing but ideals, which through their absence, merely leave a void in the unhappy home.<sup>[12]</sup>