

## FIRST DIVISION

[ G.R. No. 222541, February 15, 2017 ]

**RACHEL A. DEL ROSARIO, PETITIONER, VS. JOSE O. DEL ROSARIO AND COURT OF APPEALS, RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is this petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated May 29, 2015 and the Resolution<sup>[3]</sup> dated December 1, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 102745, which reversed the Decision<sup>[4]</sup> dated April 23, 2014 of the Regional Trial Court of Makati City, Branch 136 (RTC) in Civil Case No. 11-891 declaring the marriage of Jose O. Del Rosario (Jose) and Rachel A. Del Rosario (Rachel) void on the ground of psychological incapacity pursuant to Article 36<sup>[5]</sup> of the Family Code, as amended.<sup>[6]</sup>

#### The Facts

Rachel, then fifteen (15) years old, met Jose, then seventeen (17) years old, sometime in December 1983 at a party in Bintawan, Bagabag, Nueva Vizcaya.<sup>[7]</sup> Very soon, they became romantically involved.<sup>[8]</sup>

Sometime in 1988, Rachel went to Hongkong to work as a domestic helper. During this period, Rachel allegedly provided for Jose's tuition fees for his college education. Rachel and Jose eventually decided to get married on December 28, 1989 in a civil rites ceremony held in San Jose City, Nueva Ecija, and were blessed with a son, named Wesley, on December 1, 1993. On February 19, 1995, they renewed their vows in a church ceremony held in the Philippine Independent Church, Bagabag, Nueva Vizcaya.<sup>[9]</sup>

In 1998, Rachel went back to Hongkong to work as domestic helper/caregiver and has been working there ever since, only returning to the Philippines every year for a vacation. Through her efforts, she was able to acquire a house and lot in Rufino Homes Subdivision, San Jose, Nueva Ecija.<sup>[10]</sup>

In September 2011, Rachel filed a petition<sup>[11]</sup> for declaration of nullity of marriage before the RTC, docketed as Civil Case No. 11-891, alleging that Jose was psychologically incapacitated to fulfill his essential marital obligations. In support of her petition, Rachel claimed that: during their marriage, Jose conspicuously tried to avoid discharging his duties as husband and father. According to Rachel, Jose was hot tempered and violent; he punched her in the shoulder a few days before their church wedding, causing it to swell, when she refused to pay for the transportation expenses of his parents; he hit his own father with a pipe, causing the latter to fall unconscious, which forced them to leave Jose's parents' house where they were

then staying; and he even locked her out of their house in the middle of the night sometime in December 2007 when she fetched her relatives from the bus terminal, which he refused to perform. Rachel added that Jose would represent himself as single, would flirt openly, and had an extra-marital affair which she discovered when Jose mistakenly sent a text message to her sister, Beverly A. Juan (Beverly), stating: "*love, kung ayaw mo na akong magpunta diyay, pumunta ka na lang dito.*"

[12] Another text message read: "*Dumating lang ang asawa mo, ayaw mo na akong magtext at tumawag sa'yo.*" On one occasion, she, together with Wesley and Beverly, caught Jose and the other woman with their child inside their conjugal dwelling. Finally, she claimed that Jose would refuse any chance of sexual intimacy between them as they slowly drifted apart.[13]

Rachel, however, admitted that their married life ran smoothly during its early years, and it was only later in their marriage that Jose started frequenting bars and engaging in drinking sessions.[14]

Rachel also presented the testimonies of Wesley[15] and her sisters, Beverly and Jocelyn Cabusora,[16] which corroborated her allegations, as well as the testimony[17] of Dr. Nedy L. Tayag (Dr. Tayag), who prepared the Psychological Report[18] (Report) on Rachel. The remarks section of Dr. Tayag's Report, which was primarily based on her interview with Rachel and Wesley, stated that Jose suffered from Antisocial Personality Disorder (APD) characterized by: (a) his lack of empathy and concern for Rachel; (b) his irresponsibility and his pleasure-seeking attitude that catered only to his own fancies and comfort; (c) his selfishness marked by his lack of depth when it comes to his marital commitments; and (d) his lack of remorse for his shortcomings.[19]

For his part, Jose denied all the allegations in the petition. Jose maintained that: (a) he had dutifully performed all of his marital and parental duties and obligations to his family; (b) he had provided for his family's financial and emotional needs; and (c) he contributed to the building and maintenance of their conjugal home. He claimed that although they occasionally had misunderstandings, they nevertheless had a blissful relationship, pointing out that their first major argument was when Rachel decided to go to Hongkong to work; that they continued to communicate through mail during her stay overseas; and that he remained supportive of Rachel and would advise her to give her family the financial aid that they need so long as she would not sacrifice her well-being. Finally, he denied the alleged extra-marital affair and having laid hand on Rachel and their son.[20] Jose presented as well the testimony of Faustino Rigos to support his allegations.[21]

### **The RTC Ruling**

In a Decision[22] dated April 23, 2014, the RTC declared the marriage between Jose and Rachel void on the ground of psychological incapacity. It relied on the findings and testimony of Dr. Tayag, declaring that Jose's APD interferes with his capacity to perform his marital and paternal duties, as he in fact even refused to take responsibility for his actions, notwithstanding the overwhelming evidence against him.[23]

Jose appealed<sup>[24]</sup> to the CA, arguing that his alleged refusal to seek employment, squandering of their money on vices, violent nature, and infidelity are not the serious, grave, and permanent psychological condition that incapacitates him to perform his marital obligations required by Article 36 of the Family Code, as amended. At most, they are personality defects, *i.e.*, immaturity, irresponsibility, and unfaithfulness, which may be considered as grounds for legal separation under Article 55<sup>[25]</sup> of the same code.<sup>[26]</sup>

### **The CA Ruling**

In a Decision<sup>[27]</sup> dated May 29, 2015, the CA reversed the ruling of the RTC,<sup>[28]</sup> holding that the totality of the evidence Rachel presented was not enough to sustain a finding that Jose is psychologically incapacitated to comply with the essential obligations of marriage.<sup>[29]</sup> Particularly, the CA declared that Jose's alleged infidelity, his refusal to seek employment, his act of squandering their money on his vices, and his temper and alleged propensity for violence were not so grave and permanent as to deprive him of awareness of the duties and responsibilities of the matrimonial bond sufficient to nullify the marriage under Article 36 of the Family Code; at best, they showed that Jose was irresponsible, insensitive, or emotionally immature which nonetheless do not amount to the downright incapacity that the law requires. Additionally, the CA pointed out that the root cause of the alleged psychological incapacity, its incapacitating nature, and the incapacity itself were not sufficiently explained as Dr. Tayag's Report failed to show the relation between Jose's "deprived childhood" and "poor home condition," on one hand, and grave and permanent psychological malady, on the other. Finally, it observed that while Dr. Tayag's testimony was detailed, it only offered a general evaluation on the supposed root cause of Jose's personality disorder.<sup>[30]</sup>

Rachel moved for reconsideration,<sup>[31]</sup> which was, however, denied by the CA in a Resolution<sup>[32]</sup> dated December 1, 2015; hence, this petition.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA erred in reversing the RTC's finding of psychological incapacity.

### **The Court's Ruling**

The petition lacks merit.

The policy of the Constitution is to protect and strengthen the family as the basic social institution,<sup>[33]</sup> and marriage as the foundation of the family.<sup>[34]</sup> Because of this, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties. In this regard, psychological incapacity as a ground to nullify the marriage under Article 36<sup>[35]</sup> of the Family Code, as amended, should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.<sup>[36]</sup> It should refer to no less than a mental - not merely physical - incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage,

which, as provided under Article 68<sup>[37]</sup> of the Family Code, among others,<sup>[38]</sup> include their mutual obligations to live together, observe love, respect and fidelity, and render help and support.<sup>[39]</sup> In other words, it must be a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.<sup>[40]</sup>

In *Santos v. CA*,<sup>[41]</sup> the Court declared that psychological incapacity under Article 36 of the Family Code must be characterized by: (a) gravity, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (b) juridical antecedence, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (c) incurability, *i.e.*, it must be incurable, or otherwise the cure would be beyond the means of the party involved.<sup>[42]</sup> The Court laid down more definitive guidelines in the interpretation and application of Article 36 in *Republic v. Molina*<sup>[43]</sup> (*Molina*) whose salient points are footnoted below,<sup>[44]</sup> that incorporated the basic requirements the Court established in *Santos*.

Notwithstanding the *Molina* guidelines, note, however, that an expert opinion is not absolutely necessary and may be dispensed with in a petition under Article 36 of the Family Code if the totality of the evidence shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established.<sup>[45]</sup> The evidence need not necessarily come from the allegedly incapacitated spouse, but can come from persons intimately related to the spouses, *i.e.*, relatives and close friends, who could clearly testify on the allegedly incapacitated spouse's condition at or about the time of the marriage.<sup>[46]</sup> In other words, the *Molina* guidelines continue to apply but its application calls for a more flexible approach in considering petitions for declaration of nullity of marriages based on psychological incapacity.<sup>[47]</sup> To be clear, however, the totality of the evidence must still establish the characteristics that *Santos* laid down: gravity, incurability, and juridical antecedence.

Thus, in *Dedel v. CA*,<sup>[48]</sup> the Court declared that therein respondent's emotional immaturity and irresponsibility could not be equated with psychological incapacity as it was not shown that these acts are manifestations of a disordered personality which make her completely unable to discharge the essential obligations of the marital state, not merely due to her youth, immaturity, or sexual promiscuity.<sup>[49]</sup> In *Toring v. Toring*,<sup>[50]</sup> the Court emphasized that "irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity, as [these] may only be due to a person's difficulty, refusal, or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses."<sup>[51]</sup> The Court equally did not consider as tantamount to psychological incapacity the emotional immaturity, irresponsibility, sexual promiscuity, and other behavioral disorders invoked by the petitioning spouses in *Pesca v. Pesca*,<sup>[52]</sup> *Republic v. Encelan*,<sup>[53]</sup> *Republic v. De Gracia*,<sup>[54]</sup> and *Republic v. Romero*,<sup>[55]</sup> to name a few, and thus dismissed their petitions for declaration of nullity of marriage.

The Court maintains a similar view in this case and, thus, denies the petition. Based

on the totality of the evidence presented, there exists insufficient factual or legal basis to conclude that Jose's immaturity, irresponsibility, or infidelity amount to psychological incapacity.

Particularly, the Court notes that Rachel's evidence merely showed that Jose: (1) would often indulge in drinking sprees; (2) tends to become violent when he gets drunk; (2) avoids discharging his duties as a father to Wesley and as a husband to Rachel, which includes sexual intimacy; (3) flirts openly and represented himself as single; and (4) engaged in an extramarital affair with a bar girl who he brought to the conjugal dwelling on several occasions. Significantly, Rachel admitted that their married life ran smoothly in its early years. Dr. Tayag's findings, on the other hand, simply summarized Rachel and Wesley's narrations as she diagnosed Jose with APD and proceeded to conclude that Jose's "personality flaw is deemed to be severe, grave, and have become deeply embedded within his adaptive systems since early childhood years, thereby rendering such to be a permanent component of his life [and] [t]herefore x x x incurable and beyond repair despite any form of intervention."<sup>[56]</sup>

It should be pointed out that Dr. Tayag's Report does not explain in detail how Jose's APD could be characterized as grave, deeply rooted in his childhood, and incurable within the jurisprudential parameters for establishing psychological incapacity. Particularly, the Report did not discuss the concept of APD which Jose allegedly suffers from, *i.e.*, its classification, cause, symptoms, and cure, or show how and to what extent Jose exhibited this disorder or how and to what extent his alleged actions and behavior correlate with his APD, sufficiently clear to conclude that Jose's condition has no definite treatment, making it incurable within the law's conception. Neither did the Report specify the reasons why and to what extent Jose's APD is serious and grave, and how it incapacitated him to understand and comply with his marital obligations. Lastly, the Report hastily concluded that Jose had a "deprived childhood" and "poor home condition" that automatically resulted in his APD equivalent to psychological incapacity without, however, specifically identifying the history of Jose's condition antedating the marriage, *i.e.*, specific behavior or habits during his adolescent years that could explain his behavior during the marriage.

Moreover, Dr. Tayag did not personally assess or interview Jose to determine, at the very least, his background that could have given her a more accurate basis for concluding that his APD is rooted in his childhood or was already existing at the inception of the marriage. To be sure, established parameters do not require that the expert witness personally examine the party alleged to be suffering from psychological incapacity provided corroborating evidence are presented sufficiently establishing the required legal parameters.<sup>[57]</sup> Considering that her Report was based solely on Rachel's side whose bias cannot be doubted, the Report and her testimony deserved the application of a more rigid and stringent standards which the RTC failed to apply.

In sum, Dr. Tayag's assessment, even when taken together with the various testimonies, failed to show that Jose's immaturity, irresponsibility, and infidelity rise to the level of psychological incapacity that would justify the nullification of the parties' marriage. To reiterate and emphasize, psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of the marital obligations; it is not enough that a party prove that the other failed to meet the