Has Judicial Legislation Rendered Our Divorce Law A Dead Letter?

By JOAQUIN V. GONZALEZ

THE Philippine Divorce Law is an exceptionally strict law. It is perhaps one of the strictest in the world. This is by no means accidental. When the Legislature drafted this particular piece of legislation it took as a basic consideration the fact that the Filipinos, as a Catholic people, frowned on divorce in its absolute form and all its attendant evils. The Legislature could not ignore the national sentiment on this subject. Vigorous representations by anti-divorce groups saw to that. The result was a law which, at best, grants divorce begrudgingly. It is a law which, in some respects, is rigorous in its requirements to the point of absurdity. Witness the anomalous situation of a "Husband without a wife" or a "Wife without a husband" sanctioned under it as discussed in a recent article in this journal. Even if given a reasonably liberal interpretation very few will ever seek divorce under its severe provisions—fewer still will ever succeed. Yet, strict as it is, none will dispute that the Legislature intended it as an effective remedy for a great social evil. However, the Supreme Court seems to think it should not be much more than a mere embellishment in our statute books; for time and again it has strewn with restrictions more prohibitive, and obstacles more formidable than those expressly embodied in the statute, the path of those of few who would dare brave its stringent requirements. So much so that for all practical purposes Act 2710, as interpreted by the Supreme Court, has become a Divorce Law that defeats its own purpose. It has been reduced to a little more than a dead letter.

To prove this assertion, we have chosen three outstanding cases, which we believe put forth in bold relief the Court's policy of discouraging divorce and the strained interpretations to which it has resorted to carry out that policy. These cases are: *Soteraña Valdes vs. Tuason, 40 Phil. 943; Juarez vs. Turon, 51 Phil. 736; and Francisco vs. Tayao, 50 Phil. 42.*

Soteraña Valdes vs. Tuason (40 Phil. 943).—This is one of the earliest decisions applying the Philippine Divorce Law. In this case a husband sought relative divorce as allowed under Art. 104 of the Civil Code. The Court ruled that the only divorce now available in this jurisdiction is the absolute divorce provided for under Act 2710; that the latter has abrogated in toto the provisions of the Civil Code on divorce.

This ruling is to our mind untenable for the following reasons:

(1) The Divorce Law itself sanctions the principle of relative divorce.

(2) Absolute divorce does not correspond with the ideals and customs of the Filipino people.

(3) This interpretation is violative of the principles of statutory construction.

1. *The Divorce Law itself sanctions the principle of relative divorce*: Act 2710 itself provides for situations preparatory to abso-

lute divorce which in effect amount to relative divorce. We quote the following pertinent provisions:

"Sec. 5. An action for divorce shall in no case be tried before six months shall have elapsed since the filing of the petition.

"Sec. 6, par. 1: After the filing of the petition for divorce, *the spouses shall be entitled to live separately from each other and manage their respective property.*

"Sec. 9. *The decree of divorce* shall dissolve the community of property as soon as such degree becomes final but *shall not dissolve the bonds of matrimony until one year thereafter.*

"The bonds of matrimony shall not be considered as dissolved with regard to the spouse who, having legitimate children, has not delivered to each of them to the guardian appointed by the Court, within said period of one year, the equivalent of what would have been due to them as their legal portion if said spouse had died intestate immediately after the dissolution of the community of property."

Thus we see that in Sec. 5, Act 2710 categorically provides that trial shall take place only after the lapse of at least six months following the filing of the petition. From the time the petition is filed, the spouses are already entitled to live separately and to manage their respective properties (Sec. 6). But there is no absolute divorce yet because according to Sec. 9 "the decree of divorce . . . shall not dissolve the bonds of matrimony until one year thereafter." And that if during this year either spouse has not delivered to his children or to their guardian the equivalent of what would have been due them as their legal portion if said spouse died intestate, the bonds of matrimony shall not be considered dissolved as to him.

If during this interval between the filing of the petition and the dissolution of the bonds of matrimony, which may well last years or at least months, there is no absolute divorce and yet the spouses are living separately and managing their respective properties, their status during this transition period is that of a mere suspension of the common life which is nothing more and nothing less than the relative divorce contemplated in the Civil Code. A glance at the codal provision will confirm this conclusion Art. 104 of the Civil Code says: "Divorce only produces the suspension of the life in common of the married persons." According to Manresa, "under the Civil Code, divorce only produces the separation of the spouses." (*Manresa's Commentaries on the Civil Code Vol. 1, pp. 467 & 468. See also Benedicto vs. de la Rama, 3 Phil. 34; Goitia vs. Campos Rueda, 35 Phil. 252; Chereau vs. Fuentebella. 43 Phil. 216; Gercio vs. Sun Life Insurance Co., 48 Phil. 53*).

If Act 2710 approves of relative divorce existing side by side with absolute divorce, it seems unwarranted to hold, as the Court did, that Act 2710 abolishes relative divorce by implication. It would be grossly inconsistent to infer that a law does not approve of a principle which it sanctions by express provision.

2. *Relative divorce is more in harmony with the ideals and customs of the Filipino people than absolute divorce*: It is readily admitted that the great majority of Filipinos belong to the Catholic faith. That as such they consider marriage a divine institution which only God has the power to

dissolve. Act 2710 providing for temporal dissolution of marriage is essentially incompatible with the religious tenets of 80% of the Filipinos. This overwhelming majority can hardly be expected therefore to take advantage of this law. Hence, in effect, Act 2710 is a law for only a few. If it should be interpreted as the only law in force, it would be an unjust law for it deprives a great majority of the community of all legislation on divorce. When we consider that divorce was intended essentially as a necessary remedy to a great evil in society, the conclusion is inescapable that it was never the intention of the Legislature to deprive the people of that necessary remedy by abolishing relative divorce, well knowing that the latter is the only remedy which cures the evil and is at the same time compatible with the religious tenets of the people. (See dissenting opinion of Justice Avanceña in the case of *Valdes vs. Tuason 40 Phil. 943,* concurred in by Justice Malcolm.)

3. *This ruling is violative of the principles of statutory construction*: As the new law contains no repealing clause, if it has repealed any law at all, said repeal would be by mere implication. This manner of repealing is premised upon the supposition that the intention to repeal exists although it is not expressed. Consequently, it is necessary to find out if the intention to repeal the former law exists in the new. In ascertaining this intention, it must be remembered that, in principle, "when there is no express repeal, the presumption is against an intention to repeal." Wherefore, in order to accept that the intention to repeal exists, it is necessary that it is inferred from a very clear premise so as to destroy this negative presumption.

In the case of Act 2710 there is no such clear premise. On the contrary, there are incontrovertible indications that the legislative intent was for Act 2710 to supplement rather than repeal the Civil Code provisions. I refer to the arguments discussed in the preceding paragraphs, namely:

1. That the Divorce Law itself sanctions the principle of relative divorce.

2. That relative divorce is more in harmony with the psychology, ideals and customs of the Filipino people.

The only provision of Act 2710 which could possibly be interpreted as implying a repeal of the Civil Code provisions is Sec. 1 which says: "A petition for divorce can *only* be filed for adultery on the part of the wife or concubinage on the part of the husband." The word "only" here has been seized as an indication that the Divorce Law intended concubinage and adultery to be the sole grounds for divorce to the exclusion of the grounds enumerated in Sec. 105 of the Civil Code; that, inferentially, the relative divorce obtainable under these grounds, has also been abolished.

We are of the opinion that this is not the proper interpretation of the word "only" in Sec. 1. We submit that the word "only" here must have been intended to emphasize rather that there are now two classes of divorce with distinct grounds, namely, absolute divorce on the grounds of adultery and concubinage *only;* and relative divorce on the six grounds enumerated in Art. 105 of the

Civil Code.* The word *only* is rather to prevent anyone from thinking that the grounds for relative divorce (which are more numerous and, in general, less serious) may also be availed of to secure absolute divorce.

The preceding discussion may be summarized thus: The Supreme Court has committed itself to a policy of discouraging divorce. In pursuance of this policy it has declared relative divorce abrogated: it has ruled that absolute divorce is the only kind available at present. By making this pronouncement it has succeeded in reducing prospective applications for divorce as 80% of the Filipino people, through religious impediment, can have no use for absolute divorce. However, in order to make the law serve the purpose of the Court, the latter had to resort to an interpretation that was: (1) contrary to the spirit of the divorce law itself, (2) incompatible with the ideals, customs and psychology of the Filipino people and (3) violative of the settled principles of statutory construction.

At the time of the promulgation of the decision in the *Valdes vs. Tuason* case, it was thought that the Supreme Court merely intended to confine divorce grants within the strict limits of Act 2710. Subsequent cases, however, have shown that the policy of the Court is not only to so limit divorces but to eliminate them altogether as well whenever an excuse, no matter how technical, could be found. To illustrate this, we have chosen for discussion two exceptional cases, namely, *Juarez vs. Turon, 51 Phil. 736,* and *Francisco vs. Tayao, 50 Phil. 42.*

Juarez vs. Turon (51 Phil. 736).—The husband, Juarez, sued his wife Turon for divorce on the ground of adultery. The wife had been previously criminally convicted for adultery in the Court of First Instance of Manila. The divorce suit was filed in the Court of First Instance of Manila also, but only in a different branch. The only proof presented by the husband in the trial of the divorce action was the final judgment of conviction in the criminal case. The Supreme Court ruled that the judgment of conviction was not by itself sufficient proof to justify a grant of divorce, but that evidence must be presented anew to prove again the commission of the adultery upon which the plaintiff based his divorce application. The Court justified its ruling in the following vein:

"A judgment of conviction in a criminal case, though admissible to prove rendition of judgment, cannot be given as evidence in a civil action to establish the facts on which it is rendered. The reason is that there are *different parties* in the two proceedings, although in fact and substance the cause of action is the same Judgment in criminal action has no effect other than to show that the *guilt of the defendant was proven* in a final judgment rend-

* These are: 1. The adultery of the wife in all cases, and that of the husband when it results in public scandal or in disgrace to the wife.

2. Maltreatment by deed, or serious insults.

3. Violence exerted by the husband upon the wife in order to force her to change her religion.

4. The proposal of the husband to prostitute his wife.

5. The attempt of the husband or the wife to corrupt their sons or to prostitute their daughters and the connivance in their corruption or prostitution.

6. The conviction of the spouse to the punishment of cadena or reclusion perpetua.

ered in a criminal case as required by Section 8 of the Divorce Law."

Fallacy of Reasoning.—The fallacy of the above-quoted conclusion lies in the fact that the Court applied a general rule of evidence in a case which is properly excepted from the rule. It is true as a general proposition in evidence that a "judgment in a criminal action though admissible to establish the fact of the rendition of the judgment cannot be evidence in a civil action to establish the facts on which it was rendered." (Greenleaf on Evidence, par. 537). But it is no less true that a divorce proceeding does not come under this rule. The reason is clearly explained by Bishop thus: "While in form there are only two parties to a divorce suit, there are in legal effect three, namely, the complainant, the respondent and the public whose interest lies in the preservation of the marital status. Thus, two of the parties in both the civil and criminal actions are identical, viz., the public and the respondent; and when as in the present case, the complainant appeared and testified in the criminal case against his wife, he may be considered to have been a party in the criminal action for all practical purposes. This cannot fail to aid the conscience of the judge in discharging his duties of protecting the public against divorces for sham purposes, to know that this public has itself indicted and convicted the defendant. And when . . only the interests of the public remain to be protected *it would seem upon principle that the record of conviction should be received as alone sufficient to protect that interest. (Bishop on Marriage, Divorce and Separation, Vol. 1, Sec. 1406; also Tucker vs. Tucker, 101, N. J. Eq. 72; 137 Atl. 404).*

In effect Bishop contends that for all practical purposes the parties in both actions are the same. The complainant may be considered to be effectively a party in the criminal action because he took part therein by testifying, and on the other hand the public may also be considered a party in the divorce action because it has an interest in the preservation of the marital status and that interest has been sufficiently protected by the criminal conviction. (*See also Bauder's Appeal 115 Pa. 480; Haln vs. Bealor, 132 P. 242; 19 A. 74; Stewart vs. Steward, 93 N. Y. Eq. 1; 114 A. 851; Anderson vs. Anderson, 16 Am. Dec. 237; Randall vs. Randall, 4 Me. 326*).

This squarely answers the only objection of the Court, namely, that the judgment of conviction in the criminal case is not alone sufficient because the parties in the civil and the criminal actions are not the same. Moreover, as admitted by the Court itself, the judgment in the criminal case had the effect of showing that the guilt of the defendant had been proven. We ask, if his guilt has already been proven, why insist on having it proved again?

This ruling of the Court invites very interesting dilemmas: If it is true as a general proposition that the criminal guilt of the defendant will have to be proved all over again in the divorce action, in spite of a previous criminal conviction, suppose the divorce suit is tried before the same judge that convicted the defendant in the criminal action, will the judge have to hear the evidence of defendant's guilt all over again? Based on this decision, the answer seems to be in the affirmative, because whether both cases were tried by the same judge or not, the objection of the Court holds true,

i.e., that the parties in the two cases are different. It does seem absurd, but carrying the Court's ruling to its logical consequences, this conclusion is inevitable.

Another dilemma: assuming again that both criminal and divorce suits were tried before the same judge. Suppose the evidence which brought about the conviction of the defendant in the criminal case is no longer available in the trial of the divorce suit, could the judge in conscience hold that the adultery had not been proved? This, in spite of the fact that perhaps only a month or so before, the same judge had solemnly declared in an official decision that the same defendant had been proven guilty beyond reasonable doubt of the very crime of which he now exculpates her?

To say the least this is straining a technicality beyond the bounds of reason. Such interpretation finds support in neither law nor equity and can be explained only by the Court's desire to seal the door to divorce even if this can find no basis more solid than a flimsy technicality (*See Matchin vs. Matchin, 6 Pa. 332; Morse vs. Morse, 81 Pa. Super 602; Marshal vs. Marshall, 40 A. L. R. 624; Rendon vs. Dickens, 49 So. 888; Tuokey vs. Halsell, 35 Okla., 61; 128 Pac. 126.*)

The last case to illustrate our point is *Francisco vs. Tayao (50 Phil. 42)*. The defendant husband was convicted of adultery with a married woman. The plaintiff wife brought an action for divorce. The Supreme Court denied plaintiff's petition for divorce contending that, although admittedly the acts for which the defendant was convicted also amounted to concubinage, still because the Court in the criminal case called the crime adultery, the plaintiff cannot be granted divorce.

We submit that the Legislature never intended the name of the crime to be the deciding factor in the grant of a divorce. Rather it is the *infidelity* of the erring spouse which it intended to punish. It is the substance, rather than the name, of the crime which deserves consideration. The Court already admitted that the crime committed by the defendant in fact amounted to concubinage. The Court which tried the criminal action may have erred in naming the offense. Is the defendant any less guilty of the infidelity which the law punishes with divorce, or is the innocent spouse any less injured, merely because the Court called "adultery" that which in reality was "concubinage"?

This decision presents another interesting dilemma: Suppose A and B are husband and wife respectively. A kept C, a woman married to D, in the conjugal dwelling as his mistress. B had her husband and C prosecuted for concubinage. A and C were convicted. C, being the concubine will suffer the penalty of *destierro* in accordance with Art. 334, par. 2 of the Revised Penal Code. (*U. S. vs. Macababbag, 31 Phil. 257*). In this event, D cannot sue his wife C for divorce because she had been convicted for concubinage and not adultery, although admittedly, the concubinage for which C was convicted contains all the elements of the adultery which is a legitimate ground for divorce against the wife.

It might be claimed that the husband may prosecute her for adultery before filing suit for divorce. This may fail for either or both of two reasons:

(1) The second criminal action may amount to double jeopardy. The only element of double jeopardy that could possi-

bly be lacking is that the second prosecution may not be for the same offense. We believe, however, that it is the same offense because the substance of the crime of concubinage and adultery in the case of a married woman, are identical, viz., sexual intercourse with a man other than her husband.

(2) Moreover the woman having been banished from the jurisdiction where the crime was committed (because of conviction for concubinage) the Court may not acquire jurisdiction over her for the trial of the second action. The ultimate result would be that D, a victim of his wife's unfaithfulness, would be denied the solace of the divorce which the law in justice grants him, merely because the infidelity of his wife happened to be called concubinage, instead of adultery.

Conclusion

We have tried to show that our Supreme Court has taken an uncompromising stand against the granting of divorce. In pursuing this policy it has not hesitated to resort to flimsy technicalities, the implications of which, carried to their logical consequences, give rise to hopeless absurdities. The immediate result is the defeat of the purpose of the Divorce Law, which is to give relief to the innocent victim of an unfaithful spouse. The Supreme Court has outdone the Legislature in its strict divorce policy as embodied in Act 2710. The net result is that our Divorce Law has practically become a dead letter—an ineffective remedy of the social evil it was meant to alleviate.