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G.R. No. 221029 – REPUBLIC OF THE PHILIPPINES, Petitioner v. MARELYN TANEDO MANALO, Respondent.

Promulgated:
April 24, 2018

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CONCURRING OPINION

LEONEN, J.:

I concur with the *ponencia* of Justice Peralta, adding the following points.

I

The proposal of the Solicitor General is to give Article 26¹ of our Family Code an interpretation which capacitates and empowers the Japanese husband the option to divorce and how such choice has effects in our country while, at the same time, disallowing the Filipina wife from being able to do the same simply because she is a Filipina.

That interpretation may be unconstitutional. Article II, Section 14 of our Constitution provides:

Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

This constitutional fiat advances the notion of gender equality from its passive formulation in Article III, Section 1² to its more active orientation.

¹ FAMILY CODE, art. 26 provides:
Article 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 3637 and 38.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.

² CONST, art. III, sec. 1 provides:
Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Article III, Section 1 simply states that “nor shall any person be denied the equal protection of the laws.” Traditionally, this means that the State has no duty to find ways and means to ensure equality. It is only a prescription that whatever legal burdens and benefits are given to men should likewise be given to women. It does not require the State, through any of its organs, to find affirmative ways and means to battle the patriarchy—that complex of political, cultural, and economic factors that ensure women’s disempowerment.

By enacting our Constitution and signing on to our political obligations to the Convention on the Elimination of All Forms of Discrimination Against Women, we have legally committed to do better.

We likewise note that the Family Code was followed by Republic Act No. 7192 or the Women in Development and Nation Building Act. Within this law are provisions which ensure equal treatment between men and women, thus:

Section 2. *Declaration of Policy.* – The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provide women rights and opportunities equal to that of men.

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Section 5. *Equality in Capacity to Act.* – Women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances.

In all contractual obligations where married men have the capacity to act, married women shall have equal rights.

To this end:

- (1) Women shall have the capacity to borrow and obtain loans and execute security and credit arrangements under the same conditions as men;
- (2) Women shall have equal access to all government and private sector programs granting agricultural credit, loans and non-material resources and shall enjoy equal treatment in agrarian reform and land resettlement programs;
- (3) Women shall have equal rights to act as incorporators and enter into insurance contracts; and
- (4) Married women shall have the rights equal to those of married men in applying for passports, secure visas and other travel documents, without need to secure the consent of their spouses.



In all other similar contractual relations, women shall enjoy equal rights and shall have the capacity to act which shall in every respect be equal to those of men under similar circumstances. (Underscoring supplied)

Republic Act No. 9710 or the Magna Carta of Women reflects the state policy to “[abolish]. . . the unequal structures and practices that perpetuate discrimination and inequality”³ between the sexes, and Section 19 of the law is specific on the equality of women and men as to rights relating to marriage and family relations:

Section 19. *Equal Rights in All Matters Relating to Marriage and Family Relations.* – The State shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure:

- (a) the same rights to enter into and leave marriages or common law relationships referred to under the Family Code without prejudice to personal and religious beliefs;
- (b) the same rights to choose freely a spouse and to enter into marriage only with their free and full consent. The betrothal and the marriage of a child shall have no legal effect;

³ Rep. Act No. 9710, sec.2 provides:

Section 2. *Declaration of Policy.* - Recognizing that the economic, political, and sociocultural realities affect women's current condition, the State affirms the role of women in nation building and ensures the substantive equality of women and men. It shall promote empowerment of women and pursue equal opportunities for women and men and ensure equal access to resources and to development results and outcome. Further, the State realizes that equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality. To realize this, the State shall endeavor to develop plans, policies, programs, measures, and mechanisms to address discrimination and inequality in the economic, political, social, and cultural life of women and men. The State condemns discrimination against women in all its forms and pursues by all appropriate means and without delay the policy of eliminating discrimination against women in keeping with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments consistent with Philippine law. The State shall accord women the rights, protection, and opportunities available to every member of society.

The State affirms women's rights as human rights and shall intensify its efforts to fulfill its duties under international and domestic law to recognize, respect, protect, fulfill, and promote all human rights and fundamental freedoms of women, especially marginalized women, in the economic, social, political, cultural, and other fields without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status. The State shall provide the necessary mechanisms to enforce women's rights and adopt and undertake all legal measures necessary to foster and promote the equal opportunity for women to participate in and contribute to the development of the political, economic, social, and cultural realms.

The State, in ensuring the full integration of women's concerns in the mainstream of development, shall provide ample opportunities to enhance and develop their skills, acquire productive employment and contribute to their families and communities to the fullest of their capabilities.

In pursuance of this policy, the State reaffirms the right of women in all sectors to participate in policy formulation, planning, organization, implementation, management, monitoring, and evaluation of all programs, projects, and services. It shall support policies, researches, technology, and training programs and other support services such as financing, production, and marketing to encourage active participation of women in national development.

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- (c) the joint decision on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (d) the same personal rights between spouses or common law spouses including the right to choose freely a profession and an occupation;
- (e) the same rights for both spouses or common law spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property;
- (f) the same rights to properties and resources, whether titled or not, and inheritance, whether formal or customary; and
- (g) women shall have equal rights with men to acquire, change, or retain their nationality. The State shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. Various statutes of other countries concerning dual citizenship that may be enjoyed equally by women and men shall likewise be considered.

Customary laws shall be respected: *Provided, however,* That they do not discriminate against women. (Underscoring supplied)

Section 19 is straightforward: the State shall ensure that men and women are to have “the same rights to enter into and leave marriages.”

Following section 19 of Republic Act No. 9710, Article 26 of the Family Code should be read to mean that who initiates the divorce proceedings abroad is immaterial. Once a divorce decree is issued, the foreign spouse is deemed to have “obtained” a divorce which capacitates him or her to remarry. The same status should therefore be afforded to the Filipino spouse.

Besides, in many jurisdictions, the foreign spouse is given the option to divorce on the basis of a mutual recognition that irreconcilable differences have surfaced in the context of their relationship. Some foreign laws, therefore, allow joint filing for a divorce decree to ensure that there be less incrimination among the spouses, a more civil and welcoming atmosphere for their children, and less financial burden for the families affected. The interpretation proposed by the Solicitor General does not accommodate this possibility. It is blind to the actual complexities experienced by our citizens in mixed marriages.



II

Justice Caguioa provides the argument that interpreting Article 26 of the Family Code in the manner provided in the *ponencia* violates the nationality principle enshrined in Article 15 of the Civil Code.

I disagree.

Article 15 of the Civil Code provides:

Article 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

Clearly, it is not only Article 26 of the Family Code or the Civil Code that applies. It should also include the Constitution, which is the bedrock of rights of any citizen. Thus, the State's obligation to "ensure the fundamental equality before the law of women and men"⁴ applies with equal if not greater force. In my view, this is the full extent of the nationality principle. It is borne of rational interpretation, not judicial legislation.

III

Finally, my agreement with the *ponencia* is also impelled by my understanding that divorce is more consistent with the constitutionally entrenched fundamental freedoms inherent in individuals as human beings. It is also most consistent with the constitutional command for the State to ensure human dignity.

The restrictive nature of our marriage laws tends to reify the concept of a family which is already far from the living realities of many couples and children. For instance, orthodox insistence on heteronormativity may not compare with the various types of care that various other "non-traditional" arrangements present in many loving households.

The worst thing we do in a human relationship is to regard the commitment of the other formulaic. That is, that it is shaped alone by legal duty or what those who are dominant in government regard as romantic. In truth, each commitment is unique, borne of its own personal history,

⁴ CONST., art. II, sec. 14.



ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.

In other words, words that describe when we love or are loved will always be different for each couple. It is that which we should understand: intimacies that form the core of our beings should be as free as possible, bound not by social expectations but by the care and love each person can bring.

Yet, the present form and the present interpretation we have on the law on marriage constrains. In love, there are no guarantees. In choosing our most intimate partners, we can commit mistakes. It is but part of being human.

Our law cruelly defines the normal. The legal is coated in a false sense of morality poorly reasoned. It condemns those who have made bad choices into a living inferno.

In my view, this case is a step forward in the right direction.

IV

As I stated in a dissent⁵ I wrote in 2016, we had absolute divorce laws in the past. Act No. 2710,⁶ enacted in 1917, allowed the filing of a petition for divorce on the ground of adultery on the part of the wife, or concubinage on the part of the husband.⁷

Eleven grounds for divorce were provided in Executive Order No. 141,⁸ effective during the Japanese occupation. These grounds included “intentional or unjustified desertion continuously for at least one year prior to the filing of a [petition] for divorce” and “slander by deed or gross insult by one spouse against the other to such an extent as to make further living impracticable.”⁹

⁵ See Dissenting Opinion in *Matudan v. Republic*, G.R. No. 203284, November 14, 2016, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/203284.pdf>> [Per J. Del Castillo, Second Division].

⁶ An Act to Establish Divorce (1917).

⁷ Act No. 2710, sec.1 provides:

Section1. A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband, committed in any of the forms described in article four hundred and thirty-seven of the Penal Code.

See *Valdez v. Tuason*, 40 Phil. 943, 948 (1920) [Per J. Street, En Banc].

⁸ Otherwise known as “The New Divorce Law.”

⁹ *Baptista v. Castañeda*, 76 Phil. 461, 462 (1946) [Per J. Ozaeta, En Banc].

After the Japanese left, the laws they enacted were declared void.¹⁰ Act No. 2710 again took effect until the Civil Code's enactment in 1950. Since then, absolute divorce has been prohibited in our jurisdiction.

A world whose borders are increasingly becoming permeable with the ease of travel as well as with the technological advances will definitely foster more inter-cultural relationships. These relationships can become more intimate.

I am of the belief that the law never intended for the Filipino to be at a disadvantage. For so long as the Constitution itself guarantees fundamental equality, the absurd result from a literal and almost frigid and unfeeling interpretation of our laws should not hold. To say that one spouse may divorce and the other may not contribute to the patriarchy. It fosters an unequal relationship prone to abuse in such intimate relationships.

The law is far from frigid. It should passionately guarantee equality and I stand with this Court in ensuring that it does.

ACCORDINGLY, I vote to deny the Petition for Review on Certiorari and to affirm, with modification, the Court of Appeals' Decision in CA-G.R. CV No. 100076. The case should be remanded to the court of origin for further proceedings and reception of evidence as to the relevant Japanese law on divorce.

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MARVIC M.V.F. LEONEN
Associate Justice

¹⁰ Id. at 462-463.