EN BANC

G.R. No. 249238 — REPUBLIC OF THE PHILIPPINES, Petitioner, **v. RUBY NG a.k.a. RUBY NG SONO,** Respondent.

Promulgated:

February 27, 2024

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CONCURRING OPINION

LEONEN, *J.*:

This case involves a Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry filed by respondent Ruby Ng a.k.a. Ruby Ng Sono (Ng), based on Article 26 of the Family Code of the Philippines.

In 2004, Ng, a Filipino citizen, married a Japanese national and moved to Japan with him. On August 31, 2007, she and her then husband obtained a divorce decree by mutual agreement.[1]

On May 28, 2018, Ng filed before the Regional Trial Court a Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry. Among others, her Petition was supported by the following documents: (1) Divorce Certificate issued by the Embassy of Japan in the Philippines; (2) Authentication Certificate by the Department of Foreign Affairs in Manila; (3) Certificate of Acceptance of Notification of Divorce by the Department of Foreign Affairs in Manila; (4) Certification of the filing and recording of Divorce Certificate in the City Civil Registry Office of Manila; (5) Original Copy of the Family Registry of Japan with its English translation, bearing the official stamp of the Mayor of Nakano-Ku, Tokyo, Japan, showing the divorce was duly recorded in the Civil Registry of Japan.[2]

The Regional Trial Court judicially recognized Ng's divorce and declared her capacitated to remarry.[3]

Petitioner Republic of the Philippines (the Republic) elevated the trial court's ruling to this Court, arguing that a divorce by agreement cannot be recognized in the Philippines because a foreign divorce has to have been

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1 *Ponencia*, p. 2.
2 *Id.*
3 *Id.* at 3.

decided by a court of competent jurisdiction to be judicially recognized. It also argued that respondent failed to prove the law in Japan on divorce.[4]

The *ponencia* denied the Petition, ruling that Article 26(2) of the Family Code covers all valid divorces, whether initiated by the foreign national, the Filipino, or both, and whether it was obtained amicably or through adversarial proceedings.[5]

I concur with the *ponencia.*

In *Republic v. Manalo*,[6] this Court ruled that a valid divorce obtained abroad, even if it was at the behest of the Filipino and not the foreign national, may be judicially recognized in our jurisdiction. This Court explained that Article 26(2) of the Family Code is meant to avoid the unjust scenario where a Filipino is still married to a foreign national, even if the latter is free and able to remarry another person on account of their valid divorce abroad.

Considering this rationale, it is congruous to apply Article 26(2) of the Family Code to all types of foreign divorces—so long as they were validly obtained and they conform to the foreign law that allows it.

As discussed by the *ponencia*, this has been reiterated in several cases already, and I see no reason to depart from this ruling. I thus respectfully disagree with my esteemed colleagues who raise concerns relating to the public policy against absolute divorce.

Firstly, the law itself is clear. Article 26(2) of the Family Code reads:

> 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), 36, 37 and 38.
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> 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.

A plain reading of the provision shows that the divorce need only be validly obtained abroad by the alien spouse.

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4 *Id.*

5 *Id.* at 5.

6 *Republic v. Manalo,* 831 Phil. 33 (2018) [Per J. Peralta, *En Banc*].

Thus, to require that the divorce be obtained through a foreign court of competent jurisdiction is to insert a condition not provided in the law. To impose this as an additional requirement amounts to judicial legislation.

Justice Maria Filomena Singh points that the procedural rule governing the recognition of foreign divorces applies only to judgments, final orders, or issuances of courts and foreign tribunals.[7] It does not provide for the recognition of divorces obtained extrajudicially, including those by mutual consent of the parties.

However, the lack of a clear procedural rule for a process should not be used as a basis to deny a substantive right. The solution is to promulgate the rules of procedure for it, not to suggest that the substantive right is not recognized. Ultimately, procedural rules give way to substantive law.

I understand the concern raised regarding collusion.[8] However, collusion implies an illicit collaboration or an intention to deceive. It is done to obtain a result through dishonest means. This cannot be likened to mutual agreement openly and candidly expressed.

The same principle applies to the need for a full and fair hearing.[9] It may be necessary when both parties are not in agreement about any matter and are articulating allegations against each other. However, when the parties themselves are in mutual agreement, the involvement of the courts may not be necessary.

Justice Ramon Paul Hernando and Justice Singh raise the public policy against absolute divorce[10] and its application to all Filipinos because of Article 15 of the Civil Code.[11] They argue that to recognize foreign mutual consent divorces is to facilitate circumvention of the law.[12]

However, I find it to be counterintuitive to assume that persons will be marrying their partners just because they can divorce them. Secondly, to assume that Filipinos will be encouraged to circumvent the law erroneously takes the autonomy of the foreign spouse out of the equation. The foreigner, as the spouse, has a say in the marriage and the divorce. The Filipino spouse does not decide these matters by themselves.

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7 RULES OF COURT, Rule 39, sec. 48; J. Singh, Dissenting Opinion, p. 5.
8 J. Lazaro-Javier, Reflections, p. 3.
9 J. Hernando, Reflections, p. 3.
10 J. Hernando, Reflections, pp. 3–4; J. Singh, Dissenting Opinion, p. 6.
11 CIVIL CODE, art. 15 states: 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.
12 J. Hernando, Reflections, p. 4; J. Singh, Dissenting Opinion, p. 8.

In any case, Justice Hernando himself recognizes that we already impose a tedious judicial process for the recognition of a foreign divorce.[13] This in itself ensures that divorces obtained abroad are not easily accepted as fact in our jurisdiction. Thus, even if the parties obtained it by mutual consent in another country, it will not be recognized in our country until it is sufficiently proven in a judicial proceeding.

Finally, granting parity and protection to Filipino spouses is not inconsistent with State policies.

Prior to the enactment of the Family Code, this Court has upheld the intent to do justice to the Filipino spouse in *Van Dorn v. Romillo, Jr.*:[14]

> It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released private respondent from the marriage from the standards of American law, under which *divorce dissolves the marriage* . . .
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> . . . .
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> Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. As he is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.
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> To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, *et. Seq.* of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.[15]

Thus, and as mentioned, Article 26(2) of the Family Code and this Court's ruling in *Manalo* emphasized on reasonability: It is unreasonable for a person to remain married without a spouse.

In my separate concurring opinion in *Manalo*, I added that this interpretation is consistent with the State policy under our Constitution, laws,

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[13] J. Hernando, Reflections, p. 3.

[14] *Van Dorn v. Romillo, Jr.*, 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division].

[15] *Id.* at 362–363.

and treaties to ensure the equality of women and men before the law. Likewise, allowing divorces is more consistent with the constitutional mandate of valuing human dignity and guaranteeing full respect of human rights:

> . . . 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.
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> 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.
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> 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, ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.
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> 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.
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> 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.
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> 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.
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> . . . .
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> 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.
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> 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 contributes to the patriarchy. It fosters an unequal relationship prone to abuse in such intimate relationships.
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> The law is far from frigid. It should passionately guarantee equality and I stand with this Court in ensuring that it does.[16]

[16] J. Leonen, Separate Opinion in *Republic v. Manalo*, 831 Phil. 33, 83–85 (2018) [Per J. Peralta, *En Banc*].

I reiterate these sentiments in this concurring opinion. A restrictive position on the marital relations of individuals tends to run contrary to the constitutional mandates of (1) protecting the family as a basic autonomous social institution; (2) ensuring the fundamental equality of men and women before the law; and (3) valuing human dignity and full respect of human rights.

The Constitution recognizes marriage as an inviolable social institution which deserves State protection, serving as the foundation of the family.[17] In turn, "[t]he State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution."[18] In the 1987 Constitution, Article XV, "[t]he State recognizes the Filipino family as the nation's foundation. Accordingly, it shall strengthen its solidarity and actively promote its total development."[19]

The Constitution, thus, is clear in its intent. However, our laws on marriage do not reflect these principles. Society regulates via culture. Laws are created by and are a result of the dominant culture in society. Laws contribute to the hegemony. Thus, not all laws are just and equitable. This is seen in the predominance of heteronormativity and patriarchy in our legal system, especially in our laws on marriage.

To restrict ourselves to the heteronormative idea that a family consists of a married man and woman and their child is to remain blind to actual societal realities. Many families thrive and are able to form the strongest of relationships, leading happy and fulfilling lives without the concept of husbands, or wives, or fathers, or mothers, or children. While the traditional idea of a family will remain prevalent, the conventional form is not necessary for a unit to flourish and raise upstanding citizens and respectable and responsible members of society. Marriage could assist in creating harmonious relations in families, considering that its very nature implies a strong, supposedly irrevocable bond. However, there are many instances when marriage creates the opposite of harmony on account of various factors, and the termination or absence of marital ties can achieve the balanced, congenial, peaceful atmosphere the State aims for familial relations.

It is noteworthy that the Constitution does not require families to be in a particular configuration. The constitutional policies in relation to family are limited to defending the rights essential to achieve the State objectives. Article XV, Sections 3 and 4 of the 1987 Constitution reads:

SECTION 3. The State shall defend:

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[17] CONST., art. XV, sec. 2.
[18] CONST., art. II, sec. 12.
[19] CONST., art. XV, sec. 1.

> (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
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> (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;
>
> (3) The right of the family to a family living wage and income; and
>
> (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.
>
> SECTION 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

What the Constitution protects, thus, is not *how* families are formed. It emphasizes what must be prioritized: parental autonomy balanced with parental duty, care and protection of children, a family living wage and income, options to participate in matters that affect them, and consideration for elderly members.

Restrictions against divorce likewise run contrary to the State policy to value human dignity and to guarantee full respect for human rights.[20]

The State should be wary of interfering in the personal relations of individuals, especially relating to marriage, as the tendency is to impinge on the right to intimacy, which is closely linked to the right to privacy.

> The right to privacy is enshrined in our Constitution and in our laws. It is defined as "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities." It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." Simply put, the right to privacy is "the right to be let alone."[21]

While a social institution, marriage is, at its root, a relationship between two people. Each marriage is unique, shaped by its parties, and involves private decisions that need not be intruded upon by the public or interfered with by the State. While the State may be interested in what might result from it, it should not, and could not, exercise control over affairs involving intimacy, affection, and attachment—relations brought about by a necessary combination of autonomy and sincerity. It cannot be forced for it to be genuine. In these affairs, individuals are entitled to their freedom and privacy.

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[20] *See* CONST., art. 2, sec. 11.

[21] *Spouses Hing v. Choachuy, Sr.*, 712 Phil. 337, 348 (2013) [Per J. Del Castillo, Second Division].

As it is, our laws on marriage intrude upon a number of private rights —matters relating to intimacy and our individual autonomy. The State touches upon who we marry, under what conditions to maintain it, and how it can be terminated. Should the State go so far as to discourage its citizens from marrying foreigners just because of its public policy against divorce? I find that the State should be wary to not be so restrictive. Those who choose to marry foreigners are placed in a position different from two Filipinos marrying each other. The State, thus, should not turn a blind eye to their special circumstances, let alone punish them for exercising their right to wed the person they want to marry.

Finally, to subscribe to heteronormative models in matters relating to marriage and family likewise runs conflicts with the State policy to ensure equality of men and women before the law.

The insistence on the traditional formula of what a family is and the roles each member plays reinforces patriarchal beliefs. It results in the othering of persons and the stereotyping of relationships without understanding context or nuance. It automatically looks away from actual realities in favor of a possibly outdated "ideal" or "usual" scenario. For the State to insist this restricted point of view results in laws or policies not rooted in reality. Necessarily, it achieves a result different from what is intended.

In all cases relating to Article 26 of the Family Code, the arguments against divorce are rooted on the inaccurate assumption that divorce is always unfavorable to family relations. However, in actual experience, there are numerous instances when the mutual agreement to terminate a marriage has prevented heightened hostility and resulted in a more hospitable, peaceful environment for children.

I thus subscribe to the position that the State must no longer insist on a black and white perspective of what constitutes a family and acknowledge the many grey areas—the ambiguities between polarities.[22] It is time to recognize that one type of familial relation need not be idealized and demanded over another to fulfill the State's constitutional mandates.

ACCORDINGLY, I vote to deny the Petition for Review on *Certiorari*.

MARVIC M.V.F. LEONEN
Senior Associate Justice

[22] *See* SIMONE DE BEAUVOIR, ETHICS OF AMBIGUITY (1947).