EN BANC

G.R. No. 196359 – ROSANNA L. TAN-ANDAL, *petitioner*, *v.* **MARIO VICTOR M. ANDAL**, *respondent.*

Promulgated:

May 11, 2021

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SEPARATE CONCURRING OPINION

INTING, *J.*:

This Separate Opinion is to reflect my views and emphasize my reasons for concurring with the *ponencia*'s amendments to the guidelines set forth in *Republic v. Molina*[1] (*Molina*) as regards the interpretation and application of the concept of *psychological incapacity* as a ground for voiding marriages under Article 36 of the Family Code of the Philippines (Family Code).

The earliest definition of "psychological incapacity" under Article 36 can be found in *Santos v. CA, et al.*[2] (*Santos*) as follows:

> x x x Thus correlated, "psychological incapacity" should refer to *no less than a mental (not 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 so expressed by Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been *to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.* x x x[3] (Italics supplied.)

In *Santos*, the Court observed that the absence of a clear-cut definition of "psychological incapacity" in the Family Code had not been an oversight on the part of the Family Code Revision Committee. Rather, the *deliberate vagueness* in the term itself was so designed in the law "as to allow some *resiliency* in its application."[4]

Then came the ruling in *Molina* in which the Court laid down the guidelines for the bench and the bar in interpreting and applying Article 36 of the Family Code, *viz.*:

> From their submissions and the Court's own deliberations, the

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1 335 Phil. 664 (1997).
2 310 Phil. 21 (1995).
3 *Id.* at 40.
4 *Id.* at 36.

following guidelines in the interpretation and application of Art. 36 of the Family Code are hereby handed down for the guidance of the bench and the bar:

(1) **The burden of proof to show the nullity of the marriage belongs to the plaintiff.** Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence, inviolability and solidarity.*

(2) **The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.** Article 36 of the Family Code requires that the incapacity must be psychological – not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) **The incapacity must be proven to be existing at "the time of the celebration" of the marriage.** The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) **Such incapacity must also be shown to be medically or clinically permanent or *incurable*.** Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician

may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) **Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage.** Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

> "The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally – subject to our law on evidence – what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church – while remaining independent, separate and apart from each other – shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) The trial court must order the prosecuting attorney or fiscal

> and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.[5] (Emphasis supplied.)

Since its promulgation in 1997, the Court has strictly applied the *Molina* guidelines in petitions for nullity under Article 36, which has more often than not resulted in the denial thereof for failure to prove that one or both spouses are psychologically incapacitated to comprehend and comply with their essential marital obligations.

To illustrate, in *Republic v. Deang* (*Deang*),[6] the Court refused to nullify the marriage of the parties in the absence of sufficient evidence establishing psychological incapacity within the context of Article 36, *viz.*:

> x x x Emilio may have engaged in an extra-marital affair, gambled, failed to support Cheryl and their son, is irritable and aggressive, and abandoned his family, while Cheryl may have married Emilio simply in obedience to her parents' decision and had the constant need for her parents' care and support. However, these acts, by themselves, do not prove that both parties are psychologically incapacitated as these may have been simply due to jealousy, emotional immaturity, irresponsibility, or dire financial constraints. x x x Accordingly, it cannot be said that either party is suffering from a grave and serious psychological condition which rendered either of them incapable of carrying out the ordinary duties required in a marriage.[7]

Notably, the Court in *Deang* had disregarded the testimony of the expert witness as regards the alleged psychological incapacity as the psychologist's findings were solely founded on the narrations of the respondent spouse and her sister.[8]

In *Dedel v. Court of Appeals*,[9] the Court ruled that a spouse's sexual infidelity or perversion and abandonment, by themselves, do not constitute psychological incapacity within the contemplation of Article

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5 *Republic v. Molina*, *supra* note 1 at 676-679.
6 G.R. No. 236279, March 25, 2019.
7 *Id.*
8 *Id.*
9 466 Phil. 226 (2004).

36. It further held that emotional immaturity and irresponsibility, too, are not manifestations of a *disordered personality* which would make him or her *completely* unable to discharge the essential obligations of the marital state.[10] Although it was shown that the respondent spouse had Antisocial Personality Disorder exhibited by her blatant display of infidelity and abandonment of her family, the Court still declared that, at best, these are grounds for legal separation under Article 55 of the Family Code.

Similarly, in *Paz v. Paz*,[11] the Court found the Borderline Personality Disorder of the petitioner spouse to be insufficient, based on the totality of evidence, to prove psychological incapacity so grave, permanent, and incurable as to deprive him of the awareness of the duties and responsibilities of the matrimonial bond. It noted that at most, the evidence showed that the petitioner spouse was irresponsible, insensitive, or emotionally immature given his tendencies to resort to violence, to lie about his whereabouts and to hang out and spend a great deal of time with his friends, as well as his severe dependence on and attachment to his mother even for their son's supply of milk and diapers.

Nevertheless, in select, few cases, the Court has also applied the resiliency with which the concept of psychological incapacity under Article 36 should be applied and the case to case basis by which the provision should be interpreted.[12]

In *Halili v. Santos-Halili, et al.*,[13] the Court declared the marriage void under Article 36 considering the diagnosis of an expert witness that the petitioner spouse was suffering from a Mixed Personality Disorder, which was serious and incurable and directly affected his capacity to comply with his essential marital obligations. According to the expert witness, the petitioner spouse displayed a self-defeating and submissive attitude which encouraged other people to take advantage of him – first, by his father who treated his family like robots and, later, by the respondent spouse who was as domineering as his father.[14]

Also, in *Camacho-Reyes v. Reyes-Reyes*,[15] the Court concluded that the factual antecedents, as alleged in the petition and established

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[10] *Id.* at 233.
[11] 627 Phil. 1 (2010).
[12] See Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen in *Mallilin v. Jamesolamin, et al.*, 754 Phil. 158, 200 (2015).
[13] 607 Phil. 1 (2009).
[14] *Id.* at 6.
[15] 642 Phil. 602 (2010).

during trial, all pointed to the inevitable conclusion that the respondent spouse was psychologically incapacitated to perform the essential marital obligations as evidenced by his: (1) sporadic financial support; (2) extra-marital affairs; (3) substance abuse; (4) failed business attempts; (5) unpaid money obligations; (6) inability to keep a job that is not connected with the family businesses; and (7) criminal charges of *estafa.*[16]

As I see it, these cases show a clear disparity in how the courts have been applying the *Molina* guidelines in deciding psychological incapacity cases through the years. In this, I completely agree with the *ponencia* that the *Molina* guidelines have been applied too rigidly in past cases in a way that is inconsistent with the spirit and intent of Article 36.

Notably, the Court, too, has previously made the same observations relating to the strict application of the *Molina* guidelines. In *Ngo Te v. Gutierrez Yu-Te, et al.*,[17] the Court noted that the guidelines have "unnecessarily imposed a perspective by which psychological incapacity should be viewed, totally inconsistent with the way the concept was formulated—free in form and devoid of any definition."[18] It further expounded on the unintended consequences of the strict application of the *Molina* guidelines as follows:

> x x x The unintended consequences of Molina, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. *Far from what was intended by the Court, Molina has become a strait-jacket, forcing all sizes to fit into and be bound by it.* Wittingly or unwittingly, the Court, in conveniently applying Molina, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. Ironically, the Roman Rota has annulled marriages on account of the personality disorders of the said individuals.
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> The Court need not worry about the possible abuse of the remedy provided by Article 36, for there are ample safeguards against this contingency, among which is the intervention by the State, through the public prosecutor, to guard against collusion between the parties and/or fabrication of evidence. The Court should rather be alarmed by the rising number of cases involving marital abuse, child

[16] *Id.* at 632-633.
[17] 598 Phil. 666 (2009).
[18] *Id.* at 669.

abuse, domestic violence and incestuous rape.[19] (Italics supplied.)

This is not to say, however, that the *Molina* guidelines are truly unfounded and without any legal bases or flawed beyond repair. This, in fact, is a point that I refused to concede from the very beginning despite the number of valid concerns that have been raised, both in the past and in the present, as regards the impact of the *Molina* ruling in the disposition of psychological incapacity cases. In my view, the guidelines simply had to be *revisited*, *refined*, and *updated* to reflect what is already provided in pertinent laws and jurisprudence so as to avoid further confusion in its application by the bench and the bar.

To this end, it is my stand that the alleged root cause of psychological incapacity need *not* be *medically or clinically* identified as a *specific*, *incurable* psychological illness or be *proven in court by expert testimony* for a petition under Article 36 to be granted.

Section 2(d) of A.M. No. 02-11-10-SC, otherwise known as the Rules on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, provides:

> SECTION 2. *Petition for declaration of absolute nullity of void marriages.* —
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> x x x x
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> (d) *What to allege.* — A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.
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> *The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged.* (Italics supplied.)

Veritably, what Article 36 requires is only a showing of facts relating to *manifestations* or *symptoms* indicative of psychological incapacity and not necessarily a specific, incurable mental disorder that supposedly caused such incapacity. At most, the presentation of expert testimony to prove that a person is suffering from an incurable mental

[19] *Id.* at 695-698.

illness may be deemed as *compelling evidence* in resolving the issue of psychological incapacity, but it should not be considered an indispensable requirement for a petition under Article 36 to prosper.

This case provides an excellent opportunity for the Court to once again emphasize that an expert opinion is not absolutely necessary and may easily be dispensed with *if* the *totality of the evidence* shows that psychological incapacity had existed at the time of the celebration of the marriage. After all, there is no requirement in the law or in *Molina* that a person must first be examined by a physician before he or she can be declared psychologically incapacitated under Article 36.[20] "What is important is the presence of evidence that can adequately establish the party's psychological condition."[21]

On this point, the Committee on the Revision of the Rules on the rationale of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages further explained:

> To require the petitioner to allege in the petition the particular root cause of the psychological incapacity and to attach thereto the verified written report of an accredited psychologist or psychiatrist have proved to be too expensive for the parties. They adversely affect access to justice of poor litigants. It is also a fact that there are provinces where these experts are not available. Thus, the Committee deemed it *necessary to relax this stringent requirement enunciated in the Molina Case*. The need for the examination of a party or parties by a psychiatrist or clinical psychologist and the presentation of psychiatric experts shall now be determined by the court during the pre-trial conference.[22]

It is for these reasons that I emphasize that *psychological incapacity, as contemplated under Article 36, should be considered as a* ***legal concept*** *and not a medical one.* Stated differently, psychological incapacity is a *legal conclusion* of the courts that is *not*, as it should not be, wholly dependent on the medical diagnosis of one or both spouses by an expert in the fields of psychology or psychiatry. To reiterate, it is still the totality of evidence that must convince the court that the parties, or one of them, was mentally ill to such an extent that the person could not

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20 See *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

21 *Id.*

22 *Ting v. Velez-Ting*, 601 Phil. 676, 692 (2009), citing Rationale for the New Rules as submitted by the Committee on the Revision of Rules to the Supreme Court, November 11, 2002, p. 3, as cited in *Sta. Maria, Jr.*, Court Procedures in Family Law Cases, 2007 ed., pp. 10-11. Italics in the original.

have known the essential marital obligations he or she was assuming, or knowing them, could not have given valid assumption thereof.

In line with this, it necessarily follows that the presentation of any form of medical evidence to prove psychological incapacity will *not* guarantee that a petition for declaration of nullity of marriage under Article 36 will be granted by the courts. Nevertheless, I must stress that the courts should not arbitrarily reject a physician's medical opinion concerning the alleged psychological incapacity of a party; rather, the courts should consider the expert opinion in view of the facts and circumstances of the case and, when common knowledge fails, such opinion may be given controlling effect.[23]

With these considerations in mind, I concur with the *ponencia* that in proving psychological incapacity for purposes of Article 36, a party must prove by *clear and convincing evidence* the requirements of *juridical antecedence*, *gravity*, and *incurability*, albeit in the *legal sense*. Moreover, as an amendment to *Molina*, the alleged root cause of the psychological incapacity no longer needs to be medically or clinically identified or be proven by expert testimony.

The first two requirements are simple enough to explain. Juridical antecedence, for one, is an *explicit* requisite under the law as the psychological incapacity must be shown to have existed at the time of the celebration of the marriage, even if it only manifested later on. As for gravity, it is well settled that *mere neglect*, *refusal or difficulty* to perform the essential marital obligations *cannot* be considered tantamount to psychological incapacity within the contemplation of Article 36.[24]

As regards the aspect of incurability, I agree with the *ponencia*'s qualification that the term must be understood in the *legal, not medical, sense*. In other words, incurability as applied in psychological incapacity cases pertain not to a person's medical prognosis, but to his or her incapacity to perform the essential marital obligations with respect to a *specific partner*. Again, as I mentioned earlier, psychological incapacity must be fully viewed by the bench and the bar as a *legal concept* that does not require the presentation of an expert witness to be sufficiently established in court.

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[23] See *Lavarez, et al. v. Guevarra, et al.*, 808 Phil. 247, 256 (2017).

[24] See *Republic v. Romero*, 781 Phil. 737, 749 (2016).

Thus, I support the conclusion that the totality of the evidence presented by Rosanna L. Tan-Andal (Rosanna) clearly established that Mario Victor M. Andal (Mario) was psychologically incapacitated to comply with his essential marital obligations: *first*, Mario suffers from Narcissistic Antisocial Personality Disorder and Substance Abuse Disorder with Psychotic Features; *second*, these mental disorders have clearly rendered him psychologically incapacitated to perform his essential marital obligations to Rosanna and their child; and *third*, Mario's psychological incapacity, which is undeniably *grave* and *incurable* with respect to his relationship with Rosanna, had *existed prior to the celebration of their marriage*.

There is, therefore, no question that the marriage of Rosanna and Mario is void under Article 36 of the Family Code.

As a final point, I find it imperative to once more remind the bench and the bar that the *Molina* guidelines, even as amended in this case, are still exactly just that—*mere guidelines* that are to be applied on a case to case basis, with due regard to the peculiar set of facts and circumstances in a given case.

WHEREFORE, I vote to **GRANT** the petition and to **DECLARE** the marriage of petitioner Rosanna L. Tan-Andal and respondent Mario Victor M. Andal null and void in view of the latter's psychological incapacity to comply with his essential marital obligations.

HENRI JEAN PAUL B. INTING
Associate Justice