

**JANICE MARIE JAO, REPRESENTED BY HER MOTHER AND
GUARDIAN AD LITEM, ARLENE S. SALGADO, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS AND PERICO V. JAO,
RESPONDENTS.**

G.R. No. L-49162. July 28, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal by certiorari from the decision* of the Court of Appeals in CA-G.R. no. 51078-R, dated 29 August 1978, which dismissed petitioner's action for recognition and support against private respondent, and from the respondent Court's resolution, dated 11 October 1978, denying petitioner's motion for reconsideration of said decision.

On 28 October 1968, petitioner Janice Marie Jao, then a minor, represented by her mother and guardian-ad-litem Arlene Salgado, filed a case for recognition and support with the Juvenile and Domestic Relations Court against private respondent Perico V. Jao. The latter denied paternity so the parties agreed to a blood grouping test which was in due course conducted by the National Bureau of Investigation (NBI) upon order of the trial court. The result of the blood grouping test, held 21 January 1969, indicated that Janice could not have been the possible offspring of Perico V. Jao and Arlene S. Salgado.[1]

The trial court initially found the result of the tests legally conclusive but upon plaintiff's (herein petitioner's) second motion for reconsideration, it ordered a trial on the merits, after which, Janice was declared the child of Jao, thus entitling her to his monthly support.

Jao appealed to the Court of Appeals, questioning the trial court's failure to appreciate the result of the blood grouping tests. As there was no showing whatsoever that there was any irregularity or mistake in the conduct of the tests, Jao argued that the result of the tests should have been conclusive and indisputable evidence of his non-paternity.

The Court of Appeals upheld Jao's contentions and re-versed the trial court's decision. In its decision, the Court of Appeals held:

"From the evidence of the contending parties, it appears undisputed that JAO was introduced to ARLENE at the Saddle and Sirloin, Bayside Club, by Melvin Yabut. After this meeting, JAO dated and courted ARLENE. Not long thereafter, they had their first sexual intercourse and subsequently, they lived together as husband and wife. xxx

It further appears undisputed that in April 1968, JAO accompanied ARLENE to the Marian General Hospital for medical check-up and her confinement was with JAO's consent. JAO paid the rentals where they lived, the salaries of the maids, and other household expenses. xxx

The record discloses that ARLENE gave birth to JANICE on August 16, 1968, after completing 36 weeks of

pregnancy, which indicates that ARLENE must have conceived JANICE on or about the first week of December, 1967. Thus, one issue to be resolved in this appeal is whether on or about that time, JAO and ARLENE had sexual intercourse and were already living with one another as husband and wife.

In this connection, ARLENE contends that she first met JAO sometime in the third or fourth week of November, 1967 at the Saddle and Sirloin, Bayside Club; that after several dates, she had carnal knowledge with him at her house at 30 Long-beach, Merville, Paranaque, Rizal in the evening of November 30, 1967, and that he started to live with her at her dwelling after December 16, 1967, the date they finished their cruise to Mindoro Island.

On the other hand, JAO, albeit admitting that he met ARLENE at the Saddle and Sirloin, Bayside Club, however, maintains that this was on December 14, 1967 because the day following, he and his guests: ARLENE, Melvin Yabut, Didi Cres-cini and Charlie Litonjua went to Mindoro by boat. He dated ARLENE four times in January, 1968. He remembered he had carnal knowledge of her for the first time on January 18, 1968, because that was a week after his birthday and it was only in May, 1968 that he started cohabiting with her at the Excelsior Apartments on Roxas Boulevard.

These conflicting versions of the parties emphasize, in resolving the paternity of JANICE, the role of the blood grouping tests conducted by the NBI and which resulted in the negative finding that in a union with ARLENE, JAO could not be the father of JANICE.

We cannot sustain the conclusion of the trial court that the NBI is not in a position to determine with mathematical precision the issue of parentage by blood grouping test, considering the rulings of this Court xxx where the blood grouping tests of the NBI were admitted; especially where, in the latter case, it was Dr. Lorenzo Sunico who conducted the test and it appears that in the present case, the same Dr. Sunico approved the findings and report. xxx In *Co Tao vs. Court of Appeals*, 101 Phil 188, the Supreme Court had given weight to the findings of the NBI in its blood grouping test. Thus, it cannot be gainsaid that the competency of the NBI to conduct blood grouping tests has been recognized as early as the 1950's.

The views of the Court on blood grouping tests may be stated as follows:

"Paternity -- Science has demonstrated that by the analysis of blood samples of the mother, the child, and the alleged father, it can be established conclusively that the man is not the father of the child. But group blood testing cannot show that a man is the father of a particular child, but at least can show only a possibility that he is. Statutes in many states, and courts in others, have recognized the value and the limitations of such tests. Some of the decisions have recognized the conclusive presumption of non-paternity where the results of the test, made in the prescribed manner, show the impossibility of the alleged paternity. This is one of the few cases in which the judgment of the Court may scientifically be completely accurate, and intolerable results avoided, such as have occurred where the finding is allowed to turn on oral testimony conflicting with the results of the test.

"The findings of such blood tests are not admissible to prove the fact of paternity as they show only a possibility that the alleged father or any one of many others with the same blood type may have been the father of the child. But the Uniform Act recognizes that the tests may have some probative value to establish paternity where the blood type and the combination in the child is shown to be rare, in which case the judge is given discretion to let it in" (I Jones on Evidence, 5th Ed., pp. 193-194).

"In one specific biological trait, viz, blood groups, scientific opinion is now in accord in accepting the fact that there is a causative relation between the trait of the progenitor and the trait of the progeny. In other words, the blood composition of a child may be some evidence as to the child's paternity. But thus far this trait (in the present state of scientific discovery as generally accepted) can be used only negatively i.e. to evidence that a particular man F is not the father of a particular child C." (I Wigmore on Evidence 3rd Ed., pp. 610-611).

In a last ditch effort to bar the admissibility and competency of the blood test, JANICE claims that probative value was given to blood tests only in cases where they tended to establish paternity; and that there has been no case where the blood test was invoked to establish non-paternity, thereby implying that blood tests have probative value only when the result is a possible affirmative and not when in the negative. This contention is fallacious and must be rejected. To sustain her contention, in effect, would be recognizing only the possible affirmative finding but not the blood grouping test itself for if the result were negative, the test is regarded worthless. Indeed, this is illogical. xxx As an admitted test, it is admissible in subsequent similar proceedings whether the result be in the negative or in the affirmative. xxx"

The Court of Appeals also found other facts that ran contrary to petitioner's contention that Jao's actions before and after JANICE was born were tantamount to recognition. Said the respondent appellate court:

"On the contrary, after JANICE was born, JAO did not recognize her as his own. In fact, he filed a petition that his name as father of JANICE in the latter's certificate of live birth be deleted, evidencing his repudiation, rather than recognition. The mere acts of JAO in cohabiting with ARLENE, the attention given to her during her pregnancy and the financial assistance extended to her cannot overcome the result of the blood grouping test. These acts of JAO cannot be evaluated as recognizing the unborn JANICE as his own as the possession of such status cannot be founded on conjectures and presumptions, especially so that, We have earlier said, JAO refused to acknowledge JANICE after the latter's birth.

JAO cannot be compelled to recognize JANICE based on paragraph 2 of Article 283 in relation to Article 289 of the New Civil Code which provides: "When the child is in continuous possession of status of a child of the alleged father by the direct acts of the latter."

Nor can there be compulsory recognition under paragraphs 3 or 4 of said article which states:

"(3) When the child was conceived during the time when the mother cohabited with the supposed father;

(4) When the child has in his favor any evidence or proof that the defendant is his father."

As aptly appreciated by the court below, JANICE could have been conceived from November 20, 1967 to December 4, 1967. Indeed, ARLENE claims that her first sexual intercourse with JAO was on November 30, 1967 while the latter avers it was one week after January 18, 1968. However, to satisfy paragraph 3 as above-quoted, JANICE must have been conceived when ARLENE and JAO started to cohabit with one another. Since ARLENE herself testified that their cohabitation started only after December 16, 1967, then it cannot be gain-said that JANICE was not conceived during this cohabitation. Hence, no recognition will lie. Necessarily, recognition cannot be had under paragraph 4 as JANICE has no other evidence or proof of her alleged paternity.

Apart from these, there is the claim of JAO that, at the critical time of conception, ARLENE had carnal knowledge with two other men: "Oying" Fernandez and Melvin Yabut, which was not even rebutted; and considering that it was Melvin Yabut, who introduced ARLENE to JAO at the Bayside Club. Moreover, the testimony of ARLENE is not wholly reliable. When the trial court said that "the Court is further convinced of plaintiff's cause by ARLENE's manner of testifying in a most straight-forward and candid manner", the fact that ARLENE was admittedly a movie actress may have been overlooked so that not even the trial court could detect, by her acts, whether she was lying or not.

WHEREFORE, the judgment appealed from is hereby set aside and a new one entered dismissing plaintiff-appellee's complaint. Without pronouncement as to costs. SO ORDERED."

The petitioner now brings before this Court the issue of admissibility and conclusiveness of the result of blood grouping tests to prove non-paternity.

In this jurisdiction, the result of blood tests, among other evidence, to affirm paternity was dealt with in *Co Tao v.*

Court of Appeals,[2] an action for declaration of filia-tion, support and damages. In said case, the NBI expert's report of the blood tests stated that "from their blood groups and types, the defendant Co Tao is a possible father of the child." From this statement, the defendant contended that the child must have been the child of another man. The Court noted: "For obvious reasons, the NBI expert cannot give assurance that the appellant was the father of the child; he can only give his opinion that he is a 'possible father'. This possibility, coupled with the other facts and circumstances brought out during the trial, tends to defi-nitely establish that appellant Co Tao is the father of the child Manuel."[3]

Where the issue is admissibility and conclusiveness of blood grouping tests to disprove paternity, rulings have been much more definite in their conclusions. For the past three decades, the use of blood typing in cases of disputed parent-age has already become an important legal procedure. There is now almost universal scientific agreement that blood group-ing tests are conclusive as to non-paternity, although inconclusive as to paternity - that is, the fact that the blood type of the child is a possible product of the mother and alleged father does not conclusively prove that the child is born by such parents; but, if the blood type of the child is not the possible blood type when the blood of the mother and that of the alleged father are crossmatched, then the child cannot possibly be that of the alleged father.[4]

In jurisdictions like the United States, the admissibi-lity of blood test results to prove non-paternity has already been passed upon in several cases. In *Gilpin v. Gilpin*[5] the positive results of blood tests excluding paternity, in a case in which it was shown that proper safeguards were drawn around the testing procedures, were recognized as final on the question of paternity. In *Cuneo v. Cuneo*[6] evidence of non-paternity consisting of the result of blood grouping tests was admitted despite a finding that the alleged father had cohabited with the mother within the period of gestation. The Court said that the competent medical testimony was overwhelmingly in favor of the plaintiff, and to reject such testimony would be tantamount to rejecting scientific fact. Courts, it was stated, should apply the results of science when competently obtained in aid of situations presented, since to reject said result was to deny progress.[7] This ruling was also echoed in *Clark v. Rysedorph*[8], a filiation proceeding where an uncontradicted blood grouping test evi-dence, excluding paternity, was held conclusive.[9] Legislation expressly recognizing the use of blood tests is also in force in several states.[10] Tolentino,[11] affirms this rule on blood tests as proof of non-paternity, thus –

"Medical science has shown that there are four types of blood in man which can be transmitted through here-dity. Although the presence of the same type of blood in two persons does not indicate that one was begot-ten by the other, yet the fact that they are of different types will indicate the impossibility of one being the child of the other. Thus, when the supposed father and the alleged child are not in the same blood group, they cannot be father and child by consanguinity. The Courts of Europe today regard a blood test exclusion as an unanswerable and indisputable proof of non-paternity."[12]

Moreover,

"The cohabitation between the mother and the supposed father cannot be a ground for compulsory recogni-tion if such cohabitation could not have produced the conception of the child. This would be the case, for instance, if the cohabitation took place outside of the period of concep-tion of the child. Likewise, if it can be proved by blood tests that the child and the supposed father belong to different blood groups, the cohabitation by itself cannot be a ground for recognition."[13]

Petitioner has attempted to discredit the result of the blood grouping tests in the instant case by impugning the qualifications of the NBI personnel who performed the tests and the conduct of the tests themselves. Her allega-tions, in this regard, appear to be without merit. The NBI's forensic chemist who conducted the tests is also a serologist, and has had extensive practice in this area for several years. The blood tests were conducted six (6)

times using two (2) scientifically recognized blood grouping systems, the MN Test and the ABO System,[14] under witness and supervision.[15]

Even the allegation that Janice was too young at five months to have been a proper subject for accurate blood tests must fall, since nearly two years after the first blood test, she, represented by her mother, declined to undergo the same blood test to prove or disprove their allegations, even as Jao was willing to undergo such a test again.[16]

Accordingly, the Court affirms the decision of the Court of Appeals and holds that the result of the blood grouping tests involved in the case at bar, are admissible and conclusive on the non-paternity of respondent Jao vis-a-vis petitioner Janice. No evidence has been presented showing any defect in the testing methods employed or failure to provide adequate safeguards for the proper conduct of the tests. The result of such tests is to be accepted therefore as accurately reflecting a scientific fact.

In view of the findings of fact made by the Court of Appeals, as heretofore quoted, which are binding on this Court, we do not find it necessary to further pass upon the issue of recognition raised by petitioner.

WHEREFORE, the instant petition for review is hereby denied. Without pronouncement as to costs.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

* Penned by Justice Corazon Juliano-Agrava with the concurrence of Justices Crisolito Pascual and Rafael C. Climaco

[1] Biology Report No. B-69-14; Rollo at 42

[2] 101 Phil 188 (1957)

[3] Id at 193

[4] Guyton, TEXTBOOK OF MEDICAL PHYSIOLOGY 88 (6th ed., 1981); Solis, LEGAL MEDICINE 435 (1964).

[5] 197 Misc. 319, 94 NYS2d 706 (1950)

[6] 198 Misc. 240, 96 NYS2d 899 (1950)

[7] Id at 906

[8] 118 NYS2d 103 (1952)

[9] Id at 106

[10] UNIF. Uniform Act on Blood Tests to Determine Paternity 9 U.L.A. '55 P.P. 12 (1956). Sec. 4 of the Act states: "Effect of Test Results" - If the court finds that the conclusions of all the experts, as disclosed by the evidenced based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence. If the experts conclude that the blood tests show the possibility of the alleged father's paternity, admission of this evidence is within the discretion of the court, depending upon the infrequency of the blood type."

[11] I COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE, 1983 ed.

[12] Id at 546

[13] Id at 606

[14] Wiener, III ADVANCES IN BLOOD GROUPING 267 (1970)

[15] T.s.n., 9 Dec. 1970, pp. 56-59; 63-64; 75-80

[16] Manifestation dated 15 February 1971; Record on Appeal, p. 110

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