

FERNANDO AQUINO, PETITIONER, VS. CONCHITA DELIZO, RESPONDENT.

G.R. No. L-15853. July 27, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is a petition for certiorari to review a decision of the Court of Appeals affirming that of the Court of First Instance of Rizal which dismissed petitioner's complaint for annulment of his marriage with respondent Conchita Delizo.

The dismissed complaint, which was filed on September 6, 1955, was based on the ground of fraud, it being alleged, among other things, that defendant Conchita Delizo, herein respondent, at the date of her marriage to plaintiff, herein petitioner Fernando Aquino, on December 27, 1954, concealed from the latter the fact that she was pregnant by another man, and sometime in April, 1955, or about four months after their marriage, gave birth to a child. In her answer, defendant claimed that the child was conceived out of lawful wedlock between her and the plaintiff.

At the trial, the attorneys for both parties appeared and the court *a quo* ordered Assistant Provincial Fiscal Jose Goco to represent the State in the proceedings to prevent collusion. Only the plaintiff however, testified and the only documentary evidence presented was the marriage contract between the parties. Defendant neither appeared nor presented any evidence despite the reservation made by her counsel that he would present evidence on a later date.

On June 16, 1956, the trial court—noting that no birth certificate was presented to show that the child was born within 180 days after the marriage between the parties, and holding that concealment of pregnancy as alleged by plaintiff does not constitute such fraud as would annul a marriage—dismissed the complaint. Through a verified "petition to reopen for reception of additional evidence", plaintiff tried to present the certificates of birth and delivery of the child born of the defendant on April 26, 1955, which documents, according to him, he had failed to secure earlier and produce before the trial court thru excusable negligence. The petition, however, was denied.

On appeal to the Court of Appeals, that court held that there has been excusable neglect in plaintiff's inability to present the proof of the child's birth, through her birth certificate, and for that reason the court *a quo* erred in denying the motion for reception of additional evidence. On the theory, however, that it was not impossible for plaintiff and defendant to have had sexual intercourse during their engagement so that the child could be their own, and finding unbelievable plaintiff's claim that he did not notice or even suspect that defendant was pregnant when he married her, the appellate court, nevertheless, affirmed the dismissal of the complaint.

On March 17, 1959, plaintiff filed a motion praying that the decision be reconsidered, or, if such reconsideration be denied, that the case be remanded to the lower court for new trial. In support of the motion, plaintiff attached as annexes thereof the following documents:

"1. Affidavit of Cesar Aquino (Annex A) (defendant's brother-in-law and plaintiff's brother, with whom defendant was living at the time plaintiff met, courted and married her, and with whom defendant has begotten two more children, aside from her first born, in common-law relationship) admitting that he is the father of defendant's first born, Catherine Bess Aquino, and that he and defendant hid her pregnancy from plaintiff at the time of plaintiff's marriage to defendant;

"2. Affidavit of defendant, Conchita Delizo (Annex 'B') admitting her pregnancy by Cesar Aquino, her brother-in-law and plaintiff's own brother, at the time of her marriage to plaintiff and her having hidden this fact from plaintiff before and up to the time of their marriage;

"3. Affidavit of Albert Powell (Annex 'C') stating that he knew that Cesar Aquino and defendant lived together as husband and wife before December 27, 1954, the date of plaintiff's marriage to defendant;

"4. Birth Certificate of defendant's first born, Catherine Bess Aquino showing her date of birth to be April 26, 1955;

"5. Birth Certificate (Annex 'D') of Carrolle Ann Aquino, the second child of defendant with Cesar Aquino, her brother-in-law;

"6. Birth Certificate (Annex 'E') of Chris Charibel Aquino, the third child of Cesar Aquino and defendant; and

"7. Pictures of defendant showing her natural plumpness as early as 1952 to as late as November, 1954, the November, 1954 photo itself does not show defendant's pregnancy which must have been almost four months old at the time the picture was taken."

Acting upon the motion, the Court of Appeals ordered the defendant Conchita Delizo and Assistant Provincial Fiscal of Rizal, who was representing the Government, to answer the motion for reconsideration, and deferred action on the prayer for new trial until after the case is disposed of. As both the defendant and the fiscal failed to file an answer, and stating that it "does not believe the veracity of the contents of the motion and its annexes," the Court of Appeals, on August 6, 1959, denied the motion. From that order, the plaintiff brought the case to this Court thru the present petition for certiorari.

After going over the record of the case, we find that the dismissal of plaintiff's complaint cannot be sustained.

Under the new Civil Code, concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband constitutes fraud and is ground for annulment of marriage. (Art. 85, par. (4) in relation to Art. 86, par. (3). In the case of *Buccat vs. Buccat* (72 Phil., 19) cited in the decision sought to be reviewed, which was also an action for the annulment of marriage on the ground of fraud, plaintiff's claim that he did not even suspect the pregnancy of the defendant was held to be unbelievable, it having been proven that the latter was already in an advanced stage of pregnancy (7th month) at the time of their marriage. That pronouncement, however, cannot apply to the case at bar. Here the defendant wife was alleged to be only more than four months pregnant at the time of her marriage to plaintiff. At that stage, we are not prepared to say that her pregnancy was readily apparent, especially since she was "naturally plump" or fat as alleged by plaintiff. According to medical authorities, even on the 5th month of pregnancy, the enlargement of a woman's abdomen is still below the umbilicus, that is to say, the enlargement is limited to the lower part of the abdomen so that it is hardly noticeable and may, if noticed, be attributed only to fat formation on the lower part of the abdomen. It is only on the 6th month of pregnancy that the enlargement of the woman's abdomen reaches a height above the umbilicus, making the roundness of the abdomen more general and apparent. (See Lull, *Clinical Obstetrics*, p. 122.) If, as claimed by plaintiff, defendant is "naturally plump", he could hardly be expected to know, merely by looking, whether or not she was pregnant at the time of their marriage, more so because she must have attempted to conceal the true state of affairs. Even physicians and surgeons, with the aid of the woman herself who shows

and gives her subjective and objective symptoms, can only claim positive diagnosis of pregnancy in 33% at five months and 50% at six months. (XI Cyclopedia of Medicine, Surgery, etc. Pregnancy, p. 10.)

The appellate court also said that it was not impossible for plaintiff and defendant to have had sexual intercourse before they got married and therefore the child could be their own. This statement, however, is purely conjectural and finds no support or justification in the record.

Upon the other hand, the evidence sought to be introduced at the new trial, taken together with what has already been adduced would, in our opinion, be sufficient to sustain the fraud alleged by plaintiff. The Court of Appeals should, therefore, not have denied the motion praying for new trial simply because defendant failed to file her answer thereto. Such failure of the defendant cannot be taken as evidence of collusion, especially since a provincial fiscal has been ordered to represent the Government precisely to prevent such collusion. As to the veracity of the contents of the motion and its annexes, the same can best be determined only after hearing evidence. In the circumstances, we think that justice would be better served if a new trial were ordered.

Wherefore, the decision complained of is set aside and the case remanded to the court a quo for new trial. Without costs.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.
Barrera, J., concurs in the result.

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