

CARMEN QUIMIGUING, SUING THROUGH HER PARENTS, ANTONIO QUIMIGUING AND JACOBA CABILIN, PLAINTIFFS-APPELLANTS, VS. FELIX ICAO, DEFENDANT-APPELLEE.

G.R. No. L-26795. July 31, 1970

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal on points of law from an order of the Court of First Instance of Zamboanga del Norte (Judge Onofre Sison Abalos, presiding), in its Civil Case No. 1590, dismissing a complaint for support and damages, and another order denying amendment of the same pleading.

The events in the court of origin can be summarized as follows:

Appellant, Carmen Quimiguing, assisted by her parents, sued Felix Icao in the court below. In her complaint it was averred that the parties were neighbors in Dapitan City, and had close and confidential relations; that defendant Icao, although married, succeeded in having carnal intercourse with plaintiff several times by force and intimidation, and without her consent; that as a result she became pregnant, despite efforts and drugs supplied by defendant, and plaintiff had to stop studying. Hence, she claimed support at P120.00 per month, damages and attorney's fees.

Duly summoned, defendant Icao moved to dismiss for lack of cause of action since the complaint did not allege that the child had been born; and after hearing arguments, the trial judge sustained defendant's motion and dismissed the complaint.

Thereafter, plaintiff moved to amend the complaint to allege that as a result of the intercourse, plaintiff had later given birth to a baby girl; but the court, sustaining defendant's objection, ruled that no amendment was allowable, since the original complaint averred no cause of action. Wherefore, the plaintiff appealed directly to this Court.

We find the appealed orders of the court below to be untenable. A conceived child, although as yet unborn, is given by law a provisional personality of its own for all purposes favorable to it, as explicitly provided in Article 40 of the civil Code of the Philippines. The unborn child, therefore, has a right to support from its progenitors, particularly of the defendant-appellee (whose paternity is deemed admitted for the purpose of the motion to dismiss), even if the said child is only "en ventre de sa mere," just as a conceived child, even if as yet unborn, may receive donations as prescribed by Article 742 of the same code, and its being ignored by the parent in his testament may result in preterition of a forced heir that annuls the institution of the testamentary heir, even if such child should be born after the death of the testator (Article 854, Civil Code).

"ART. 742. Donations made to conceived and unborn children may be accepted by those persons who would legally represent them if they were already born."

"ART. 854. The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of

heir; but the devises and legacies shall be valid insofar as they are not inofficious.

"If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation."

It is thus clear that the lower court's theory that Article 291 of the Civil Code declaring that support is an obligation of parents and illegitimate children "does not contemplate support to children as yet unborn", violates Article 40 aforesaid, besides imposing a condition that nowhere appears in the text of Article 291.

It is true that Article 40 prescribing that "the conceived child shall be considered born for all purposes that are favorable to it" adds further "provided it be born later with the conditions specified in the following article" (i. e., that the foetus be alive at the time it is completely delivered from the mother's womb). This proviso, however, is not a condition precedent to the right of the conceived child: for if it were, the first part of Article 40 would become entirely useless and ineffective. Manresa, in his Commentaries (5th Ed.) to the corresponding Article 29 of the Spanish Civil Code, clearly points this out:

"Los derechos atribuidos al nasciturus no son simples expectativas, ni aun en el sentido tecnico que la moderna doctrina da a esta figura juridica, sino que constituyen un caso de los propiamente llamados 'derechos en estado dependencia'; el nacimiento del sujeto en las condiciones previstas por el art. 30, no determina el nacimiento de aquellos derechos (que ya existian de antemano), sino que se trata de un hecho que tiene efectos declarativos. (1 Manresa, Op. cit., page 271)

A second reason for reversing the orders appealed from is that for a married man to force a woman not his wife to yield to his lust (as averred in the original complaint in this case) constitutes a clear violation of the rights of his victim that entitles her to claim compensation for the damage caused. Says Article 21 of the Civil Code of the Philippines:

"ART. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

The rule of Article 21 is supported by Article 2219 of the same Code:

"ART. 2219. Moral damages may be recovered in the following and analogous cases:

(3) Seduction, abduction, rape or other lascivious acts:

x x x x x x x x x x x x

(10) Acts and actions referred to in Article 21, 26, 27, 28 . . ."

Thus, independently of the right to support of the child she was carrying, plaintiff herself had a cause of action for damages under the terms of the complaint; and the order dismissing it for failure to state a cause of action was doubly in error.

WHEREFORE, the orders under appeal are reversed and set aside. Let the case be remanded to the court of origin for further proceedings conformable to this decision. Costs against appellee Felix Icao.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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