

**NICANOR P. NICOLAS AS PROVINCIAL FISCAL OF RIZAL,
PETITIONER, VS. HON. JUAN P. ENRIQUEZ, AS PRESIDING JUDGE OF
BRANCH II OF THE COURT OF FIRST INSTANCE OF RIZAL, JIMMY
WILLIAM N...**

G.R. No. L-8371. June 30, 1955

Ponente: REYES, A., J.

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REYES, A., J.:

At the trial of a criminal case for concubinage filed in the Court of First Instance of Rizal by Corazon Vizcarra against the defendant Jimmy William Nelson and his co-defendant Priscilla Fontanosa, the court ruled out testimony of three prosecution witnesses tending to show that a boy named Paul William Nelson, born in Cavite on September 17, 1949, was the son of both defendants. The said testimony was objected to as immaterial, but the objection was sustained on the ground that inquiry into the paternity of a natural child is forbidden except in actions for forcible acknowledgment.

Contending that prior sexual relations between the defendants were admissible to show "propensity" to commit the offense charged or disposition to maintain such relations even after the marriage of one of the defendants to the complainant, the prosecution brought the present action for mandamus to compel the trial court to admit the preferred evidence.

It is a rule of evidence that what one did at one time is no proof of his having done the same or a similar thing at another time. But the rule is not absolute, for it is subject to the exceptions enumerated in section 17 of Rule 123, Rules of Court, which reads—

"Sec. 17. Evidence of similar acts.—Evidence that one did or omitted to do a certain thing at one time is not admissible to prove that he did or omitted to do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like."

We are not persuaded that the preferred evidence, when viewed in the light of facts brought out in the present case, would come under any of the exceptions named. It appears from the order containing the questioned ruling that the boy Paul was born five years before complainant's marriage to one of the defendants. This means that the previous sexual relations sought to be proved were far removed in point of time from the illicit act now complained of, and having, moreover, taken place when there was as yet no legal impediment to the same, they furnish no rational basis for the inference that they would be continued after complainant's marriage to one of the defendants had created such impediment and made continuance of sexual relations between the defendants a crime. The evidence objected to being immaterial and irrelevant, the trial court cannot be compelled to admit it regardless of whether or not the New Civil Code permits investigation or inquiry into the paternity of a natural child except in actions for forcible acknowledgement.

The writ prayed for is, therefore, denied, but without special pronouncement as to costs.

Bengzon, Padilla,, Montemayor, Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

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