

ANTONIO MACADANGDANG, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND ELIZA-BETH MEJIAS, RESPONDENTS.*G.R. No. L-49542. September 12, 1980*

Ponente: MAKASIAR, J.

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This petition for review seeks to set aside the decision of the Court of Appeals in CA-G.R. No. 54618-R which reversed the decision of the Court of First Instance of Davao, Branch IX dismissing the action for recognition and support filed by respondent Elizabeth Mejias against petitioner Antonio Macadangdang, and which found minor Rolando to be the illegitimate son of petitioner who was ordered to give a monthly support of P350.00 until his alleged son reaches the age of majority (p. 47, rec.; p. 10, ROA).

The records show that respondent Elizabeth Mejias is a married woman, her husband being Crispin Anahaw (pp. 61-62, t.s.n., Sept. 21, 1972; pp. 10-11, Brief for Respondent [p. 198, rec.]). She allegedly had intercourse with petitioner Antonio Macadangdang sometime in March, 1967 (p. 38, t.s.n., June 7, 1972 in CC No. 109). She also alleges that due to the affair, she and her husband separated in 1967 (p. 63, t.s.n., Sept. 21, 1972). On October 30, 1967 (7 months or 210 days following the illicit encounter), she gave birth to a baby boy who was named Rolando Macadangdang in baptismal rites held on December 24, 1967 (Annex "A", List of Exhibits).

The records also disclose that on April 25, 1972, respondent (then plaintiff) filed a complaint for recognition and support against petitioner (then defendant) with the Court of First Instance of Davao, Branch IX. This case was docketed as Civil Case No. 263 (p. 1, ROA).

Defendant (now petitioner) Macadangdang filed his answer on June 30, 1972, opposing plaintiff's claim and praying for its dismissal (p. 3, ROA).

On August 9, 1972, the lower court in a pretrial conference, issued a Pre-trial Order formalizing certain stipulations, admissions and factual issues on which both parties agreed (pp. 4, 5, and 6, ROA). Correspondingly, upon agreement of the parties, an amended complaint was filed by plaintiff on October 17, 1972 (pp. 7, 8 and 9, ROA).

In its decision rendered on February 27, 1973, the lower court dismissed the complaint. The decision invoked positive provisions of the Civil Code and Rules of Court and authorities (pp. 10-18, ROA).

On April 18, 1973, plaintiff appealed the CFI decision to the Court of Appeals (p. 59, rec.). In her appeal, appellant assigned these errors:

1. "The Honorable Trial Court erred in applying in the instant case the provisions of Arts. 255 and 256 of the Civil Code and Secs. 4[a], 4[b] and 4[c], Rule 131, of the Revised Rules of Court" (p. 18, rec.);
2. "The Honorable Trial Court erred in holding that plaintiff-appellant cannot validly question the legitimacy of her son, Rolando Macadangdang, by a collateral attack without joining her legal husband as a party in the instant case" (p. 18, rec.).

In its decision handed down on June 2, 1978, the Court of Appeals reversed the lower court's decision (p. 47, rec.) and thus declared minor Rolando to be an illegitimate son of Antonio Macadangdang (p. 52, rec.).

On November 6, 1978, the Court of Appeals denied appellant's motions for reconsideration for lack of merit. (p. 56, rec.).

Hence, petitioner filed this petition on January 12, 1979.

The issues boil down to:

- Whether or not the child Rolando is conclusively presumed the legitimate issue of the spouses Elizabeth Mejias and Crispin Anahaw; and
- Whether or not the wife may institute an action that would bastardize her child without giving her husband, the legally presumed father, an opportunity to be heard.

The crucial point that should be emphasized and should be straightened out from the very beginning is the fact that respondent's initial illicit affair with petitioner occurred sometime in March, 1967 and that by reason thereof, she and her husband separated. This fact surfaced from the testimony of respondent herself in the hearing of September 21, 1972 when this case was still in the lower court. The pertinent portions of her testimony are thus quoted:

"By Atty. Fernandez:

"Q -

What did you feel as a result of the incident where Antonio Macadangdang used a pill and took advantage of your womanhood?

"A -

I felt worried, mentally shocked and humiliated.

"Q -

If these feelings: worries, mental shock and humiliation, if estimated in monetary figures, how much will be the amount?

"A -

Ten thousand pesos, sir.

"Q -

And because of the incident, what happened to your marriage with Crispin Anahaw?

xx xx xx xx

"WITNESS:

A -

We separated, sir". (pp. 61-63, T.s.n., Civil Case No. 263, Sept. 21, 1972; italics supplied).

From the foregoing line of questions and answers, it can be gleaned that respondent's answers were given with spontaneity and with a clear understanding of the questions posed. There cannot be any other meaning or interpretation of the word "incident" other than that of the initial contact between petitioner and respondent. Even

a layman would understand the clear sense of the question posed before respondent and her categorical and spontaneous answer which does not leave any room for interpretation. It must be noted that the very question of her counsel conveys the assumption of an existing marriage between respondent and her husband.

The finding of the Court of Appeals that respondent and her husband were separated in 1965 cannot therefore be considered conclusive and binding on this Court. It is based solely on the testimony of respondent which is self-serving. Nothing in the records shows that her statement was confirmed or corroborated by another witness and the same cannot be treated as borne out by the record or that which is based on substantial evidence. Respondent's testimony, by itself, is insufficient without further evidence. It is not even confirmed by her own husband, who was not impleaded.

In the case of Tolentino vs. De Jesus (L-32797, 56 SCRA 167 [1974]), this Court restated that the findings of facts of the Court of Appeals are conclusive on the parties and on the Supreme Court, unless (1) the conclusion is a finding grounded entirely on speculation, surmise, and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of both appellant and appellee; (6) the findings of facts of the Court of Appeals are contrary to those of the trial court; (7) said findings of facts are conclusions without citation of specific evidence on which they are based; (8) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (9) when the finding of facts of the Court of Appeals is premised on the absence of evidence and is contradicted by evidence on record [Pioneer Insurance and Surety Corporation vs. Yap, L-36232, December 19, 1974; Roque vs. Buan, L-22459, 21 SCRA 642 (1967); Ramos vs. Pepsi-Cola Bottling Company of the Philippines, L-22533, 19 SCRA 289 (1967); italics supplied].

Again, in Roque vs. Buan, *supra*, this Court reiterated the aforestated doctrine adding four more exceptions to the general rule. This case invoked the same ruling in the previous case of Ramos vs. Pepsi-Cola Bottling Company, etc., *supra*.

In the recent case of Francisca Alsua-Betts, et al. vs. Court of Appeals, et al. (L-46430-31, July 30, 1979), which petitioner aptly invokes, this Court thus emphasized:

"x x x But what should not be ignored by lawyers and litigants alike is the more basic principle that the 'findings of fact' described as 'final' or 'conclusive' are those borne out by the record or those which are based upon substantial evidence. The general rule laid down by the Supreme Court does not declare the absolute correctness of all the findings of fact made by the Court of Appeals. There are exceptions to the general rule, where we have reviewed the findings of fact of the Court of Appeals x x" (italics supplied).

The following provisions of the Civil Code and the Rules of Court should be borne in mind:

"Art. 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

"Against this presumption, no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

"This physical impossibility may be caused:

"(1) By the impotence of the husband;

"(2) By the fact that the husband and wife were living separately, in such a way that access was not possible;

“(3) By the serious illness of the husband.

"Art. 256. The child shall be presumed legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

"Art. 257. Should the wife commit adultery at or about the time of the conception of the child, but there was no physical impossibility of access between her and her husband as set forth in article 255, the child is prima facie presumed to be illegitimate if it appears highly improbable, for ethnic reasons, that the child is that of the husband. For the purposes of this article, the wife's adultery need not be proved in a criminal case.

xx xx xx

"Sec. 4. Quasi-conclusive pre-sumptions of legitimacy --

"(a) Children born after one hundred eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed legitimate.

"Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

"This physical impossibility may be caused:

"[1] By the impotence of the husband;

"[2] By the fact that the husband and the wife were living separately, in such a way that access was not possible;

"[3] By the serious illness of the husband;

“(b) The child shall be presumed legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

“(c) Should the wife commit adultery at or about the time of the conception of the child, but there was no physical impossibility of access between her and her husband as set forth above, the child is presumed legitimate, unless it appears highly improbable, for ethnic reasons, that the child is that of the husband. For the purpose of the rule, the wife's adultery need not be proved in a criminal case. xx x” (Rule 131, Rules of Court).

Whether or not respondent and her husband were separated would be immaterial to the resolution of the status of the child Rolando. What should really matter is the fact that during the initial one hundred twenty days of the three hundred which preceded the birth of the aforementioned child, no concrete or even substantial proof was presented to establish physical impossibility of access between respondent and her spouse. From her very revealing testimony, respondent declared that she was bringing two sacks of rice to Samal for her children; that her four children by her husband lived in her mother's house in the said town; that her alleged estranged husband also lived in her mother's place (p. 73, rec.; pp. 21 & 22, 64 & 65, t.s.n., Sept. 21, 1972). It should also be noted that even during her affair with petitioner and right after her delivery, respondent went to her mother's house in Samal for treatment. Thus, in the direct examination of Patrocinia Avila (the boy's yaya), the following came out:

"Q -

Why were you taking care of the child Rolando, where was Elizabeth Mejias?

"A -

Because Elizabeth went to her parents in Samal, Davao del Norte for treatment because she had a relapse" (p.

13, t.s.n. of Sept. 21, 1972).

From the foregoing and since respondent and her husband continued to live in the same province, the fact remains that there was always the possibility of access to each other. As has already been pointed out, respondent's self-serving statements were never corroborated nor confirmed by any other evidence, more particularly that of her husband.

The baby boy subject of this controversy was born on October 30, 1967, only seven (7) months after March, 1967 when the "incident" or first illicit intercourse between respondent and petitioner took place, and also, seven months from their separation (if there really was a separation). It must be noted that as of March, 1967, respondent and Crispin Anahaw had already four children; hence, they had been married years before such date (t.s.n., pp. 21-22, Sept. 21, 1972). The birth of Rolando came more than one hundred eighty [180] days following the celebration of the said marriage and before 300 days following the alleged separation between aforementioned spouses.

Under the aforequoted Article 255 of the Civil Code, the child Rolando is conclusively presumed to be the legitimate son of respondent and her husband.

The fact that the child was born a mere seven (7) months after the initial sexual contact between petitioner and respondent is another proof that the said child was not of petitioner since, from all indications, he came out as a normal, full-term baby.

It must be stressed that the child under question has no birth certificate nor any other official record of birth. His birth is attested to merely by oral declarations of witnesses and by a Certificate of Baptism (attached in the List of Exhibits) which was prepared in the absence of the alleged father [petitioner]. Note again that he was born on October 30, 1967. Between March, 1967 and October 30, 1967, the time difference is clearly 7 months. The baby Rolando could have been born prematurely. But such is not the case. Respondent underwent a normal nine-month pregnancy. Respondent herself and the *yaya*, Patrocinia Avila, declared that the baby was born in the rented house at Carpenter Street, which birth was obviously normal; that he was such a healthy baby that barely 5 days after his birth, he was already cared for by said *yaya* when respondent became sick (pp. 28, 29 & 43, t.s.n., Sept. 21, 1972); and that when he was between 15 days and 2 months of age, respondent left him to the care of the *yaya* when the former left for Samal for treatment and returned only in February, 1968 (pp. 30-32, t.s.n., Sept. 21, 1972). From the aforesaid facts, it can be indubitably said that the child was a full-term baby at birth, normally delivered, and raised normally by the *yaya*. If it were otherwise or if he were born prematurely, he would have needed special care like being placed in an incubator in a clinic or hospital and attended to by a physician, not just a mere *yaya*. These all point to the fact that the baby who was born on October 30, 1967 or 7 months from the first sexual encounter between petitioner and respondent was conceived as early as January, 1967. How then could he be the child of petitioner?

In Our jurisprudence, this Court has been more definite in its pronouncements on the value of baptismal certificates. It thus ruled that while baptismal and marriage certificates may be considered public documents, they are evidence only to prove the administration of the sacraments on the dates therein specified -- but not the veracity of the statements or declarations made therein with respect to his kinsfolk and/or citizenship (*Paa vs. Chan*, L-25945, Oct. 31, 1967). Again, in the case of *Fortus vs. Novero* (L-22378, 23 SCRA 1331 [1968]), this Court held that a baptismal certificate is conclusive proof only of the baptism administered, in conformity with the rites of the Catholic Church by the priest who baptized the child, but it does not prove the veracity of the declarations and statements contained in the certificate that concern the relationship of the person baptized. Such declarations and statements, in order that their truth may be admitted, must indispensably be shown by proof

recognized by law.

The child Rolando is presumed to be the legitimate son of respondent and her spouse. This presumption becomes conclusive in the absence of proof that there was physical impossibility of access between the spouses in the first 120 days of the 300 which preceded the birth of the child. This presumption is actually quasi-conclusive and may be rebutted or refuted by only one evidence -- the physical impossibility of access between husband and wife within the first 120 days of the 300 which preceded the birth of the child. This physical impossibility of access may be caused by any of these:

- Impotence of the husband;
- Living separately in such a way that access was impossible; and
- Serious illness of the husband.

This presumption of legitimacy is based on the assumption that there is sexual union in marriage, particularly during the period of conception. Hence, proof of the physical impossibility of such sexual union prevents the application of the presumption (Tolentino, Commentaries & Jurisprudence on the Civil Code, Vol. I, p. 513 citing Bevilaqua, Familia p. 311).

The modern rule is that, in order to overthrow the presumption of legitimacy, it must be shown beyond reasonable doubt that there was no access as could have enabled the husband to be the father of the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary; where sexual intercourse is presumed or proved, the husband must be taken to be the father of the child (Tolentino, citing Madden, Persons and Domestic Relations, pp. 340-341).

To defeat the presumption of legitimacy, there-fore, there must be physical impossibility of access by the husband to the wife during the period of conception. The law expressly refers to physical impossibility. Hence, a circumstance which makes sexual relations improbable, cannot defeat the presumption of legitimacy; but it may be proved as a circumstance to corroborate proof of physical impossibility of access (Tolentino, citing Bonet 352; 4 Valverde 408).

Impotence refers to the inability of the male organ to copulation, to perform its proper function (Bouvier's Law Dictionary 514). As defined in the celebrated case of *Menciano vs. San Jose* (89 Phil. 63), impotency is the physical inability to have sexual intercourse. It is not synonymous with sterility. Sterility refers to the inability to procreate, whereas impotence refers to the physical inability to perform the act of sexual intercourse. In respect of the impotency of the husband of the mother of a child, to overcome the presumption of legitimacy based on conception or birth in wedlock or to show illegitimacy, it has been held or recognized that the evidence or proof must be clear or satisfactory; clear, satisfactory and convincing, irresistible or positive (S.C. -- *Tarleton vs. Thompson*, 118 S.E. 421, 125 SC 182, cited in 10 C.J.S. 50).

The separation between the spouses must be such as to make sexual access impossible. This may take place when they reside in different countries or provinces, and they have never been together during the period of conception (*Estate of Benito Marcelo*, 60 Phil. 442). Or, the husband may be in prison during the period of conception, unless it appears that sexual union took place through corrupt violation of or allowed by prison regulations (1 *Manresa* 492-500).

The illness of the husband must be of such a nature as to exclude the possibility of his having sexual intercourse with his wife; such as, when because of a sacroiliac injury, he was placed in a plaster cast, and it was inconceivable to have sexual intercourse without the most severe pain (Tolentino, citing *Commissioner vs. Kotel*,

256 App. Div. 352, 9 N.Y. Supp. p. 515); or the illness produced temporary or permanent impotence, making copulation impossible (Tolentino, citing Q. Bonet 352).

Thus, in the case of *Andal vs. Macaraig* (89 Phil. 165), this Court ruled that just because tuberculosis is advanced in a man, does not necessarily mean that he is incapable of sexual intercourse. There are cases where persons suffering from tuberculosis can do the carnal act even in the most crucial stage of health because then they seemed to be more inclined to sexual intercourse. The fact that the wife had illicit intercourse with a man other than her husband during the initial period, does not preclude cohabitation between said husband and wife.

Significantly, American courts have made definite pronouncements or rulings on the issues under consideration.

The policy of the law is to confer legitimacy upon children born in wedlock when access of the husband at the time of conception was not impossible (*N.Y. Milone vs. Milone*, 290 N.Y. S.863, 160 Misc. 830) and there is the presumption that a child so born is the child of the husband and is legitimate even though the wife was guilty of infidelity during the possible period of conception (*N.Y. Dieterich vs. Dieterich*, 278 N.Y. S.645, Misc. 714; both cited in 10 C.J.S., pp. 18, 19 & 20).

So firm was this presumption originally that it cannot be rebutted unless the husband was incapable of procreation or was absent beyond the four seas, that is, absent from the realm, during the whole period of the wife's pregnancy (10 C.J.S. p. 20).

The presumption of legitimacy of children born during wedlock obtains, notwithstanding the husband and wife voluntarily separate and live apart, unless the contrary is shown (*Ala. Franks vs. State*, 161 So. 549, 26 Ala. App. 430) and this includes children born after the separation [10 C.J.S. pp. 23 & 24; underscoring supplied].

It must be stressed that Article 256 of the Civil Code which provides that the child is presumed legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress has been adopted for two solid reasons. First, in a fit of anger, or to arouse jealousy in the husband, the wife may have made this declaration (*Powell vs. State*, 95 N.E., 660). Second, the article is established as a guaranty in favor of the children whose condition should not be under the mercy of the passions of their parents. The husband whose honor is offended, that is, being aware of his wife's adultery, may obtain from the guilty spouse by means of coercion, a confession against the legitimacy of the child which may really be only a confession of her guilt. Or the wife, out of vengeance and spite, may declare the child as not her husband's although the statement be false. But there is another reason which is more powerful, demanding the exclusion of proof of confession or adultery, and it is, that at the moment of conception, it cannot be determined when a woman cohabits during the same period with two men, by whom the child was begotten, it being possible that it be the husband himself (*Manresa*, Vol. I, pp. 503-504).

Hence, in general, good morals and public policy require that a mother should not be permitted to assert the illegitimacy of a child born in wedlock in order to obtain some benefit for herself (*N.Y. - Flint vs. Pierce*, 136 N.Y. S.1056, cited in 10 C.J.S. 77).

The law is not willing that the child be declared illegitimate to suit the whims and purposes of either parent, nor merely upon evidence that no actual act of sexual intercourse occurred between husband and wife at or about the time the wife became pregnant. Thus, where the husband denies having any intercourse with his wife, the child was still presumed legitimate (*Lynn vs. State*, 47 Ohio App. 158, 191 N.E. 100).

With respect to Article 257 aforequoted, it must be emphasized that adultery on the part of the wife, in itself, cannot destroy the presumption of legitimacy of her child, because it is still possible that the child is that of the husband (Tolentino, citing 1 Vera 170; 4 Borja 23-24).

It has, therefore, been held that the admission of the wife's testimony on the point would be unseemly and scandalous, not only because it reveals immoral conduct on her part, but also because of the effect it may have on the child, who is in no fault, but who nevertheless must be the chief sufferer thereby (7 Am. Jur., Sec. 21, pp. 641-642).

In the case of a child born or conceived in wedlock, evidence of the infidelity or adultery of the wife and mother is not admissible to show illegitimacy, if there is no proof of the husband's impotency or non-access to his wife (Iowa -- Craven vs. Selway, 246 N.W. 821, cited in 10 C.J.S. 36).

At this juncture, it must be pointed out that only the husband can contest the legitimacy of a child born to his wife. He is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces; and he should decide whether to conceal that infidelity or expose it, in view of the moral or economic interest involved (Tolentino, citing Bevilacqua, Familia, p. 314).

The right to repudiate or contest the legitimacy of a child born in wedlock belongs only to the alleged father, who is the husband of the mother and can be exercised only by him or his heirs, within a fixed time, and in certain cases, and only in a direct suit brought for the purpose (La -- Ducasse vs. Ducasse, 45 So. 565, 120 La. 731; Saloy's Succ. 10 So. 872, 44 La. Ann., cited in 10 C.J.S. 77; underlining supplied).

Thus the mother has no right to disavow a child because maternity is never uncertain; she can only contest the identity of the child (La -- Eloi vs. Mader, 1 Rob. 581, 38 Am. D. 192).

Formerly, declarations of a wife that her husband was not the father of a child in wedlock were held to be admissible in evidence; but the general rule now is that they are inadmissible to bastardize the child, regardless of statutory provisions obviating incompetency on the ground of interest, or the fact that the conception was ante-nuptial. The rule is said to be founded in decency, morality and public policy (Wallace vs. Wallace, 137 Iowa 37, 114 N.W. 527, 14 L.R.A. [N.S.] 544, 126 Am. St. Rep. 253, 15 Ann. Cas. 761, Am. Jur. 26).

From the foregoing, particularly the testimony of respondent and her witnesses, this Court has every reason to believe that Crispin Anahaw was not actually separated from Elizabeth Mejias; that he was a very potent man, having had four children with his wife; that even if he and respondent were living separately (which the latter failed to prove anyway) and even assuming, for argument's sake, that they were really separated, there was all the possibility of physical access to each other considering their proximity to each other and considering further that respondent still visited and recuperated in her mother's house in Samal where her spouse resided with her children. Moreover, Crispin Anahaw did not have any serious illness or any illness whatsoever which would have rendered him incapable of having sexual act with his wife. No substantial evidence whatsoever was brought out to negate the aforesaid facts.

Crispin Anahaw served as a refuge after respondent's reckless and immoral pursuits or a "buffer" after her flings. And she deliberately did not include nor present her husband in this case because she could not risk her scheme. She had to be certain that such scheme to bastardize her own son for her selfish motives would not be thwarted.

This Court finds no other recourse except to deny respondent's claim to declare her son Rolando the illegitimate child of petitioner. From all indications, respondent has paraded herself as a woman of highly questionable character. A married woman who, on first meeting, rides with a total stranger who is married towards nightfall, sleeps in his house in the presence of his children, then lives with him after their initial sexual contact -- the atmosphere for which she herself provided -- is patently immoral and hedonistic. Although her husband was a very potent man, she readily indulged in an instant illicit relationship with a married man she had never known before.

Respondent had shown total lack of or genuine concern for her child (Rolando) for, even after his birth, she left him in the care of a *yaya* for several months. This is not the normal instinct and behavior of a mother who has the safety and welfare of her child foremost in her mind. The filing of this case itself shows how she is capable of sacrificing the psycho-social future (reputation) of the child in exchange for some monetary consideration. This is a blatant shamelessness.

It also appears that her claim against petitioner is a disguised attempt to evade the responsibility and consequence of her reckless behavior at the expense of her husband, her illicit lover and above all -- her own son. For this Court to allow, much less consent to, the bastardization of respondent's son would give rise to serious and far-reaching consequences on society. This Court will not tolerate scheming married women who would indulge in illicit affairs with married men and then exploit the children born during such immoral relations by using them to collect from such moneyed paramours. This would be the vilest form of wrecking the stability of two families. This would be a severe assault on morality.

And as between the paternity by the husband and the paternity by the paramour, all the circumstances being equal, the law is inclined to follow the former; hence, the child is thus given the benefit of legitimacy.

Finally, Article 220 of the Civil Code reinforces the aforesaid principle when it provides thus:

"Art. 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression."

WHEREFORE, THE DECISION OF THE COURT OF APPEALS DATED JUNE 2, 1978, AND ITS RESOLUTION DATED NOVEMBER 6, 1978 ARE HEREBY REVERSED AND SET ASIDE. COSTS AGAINST PRIVATE RESPONDENT.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

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