

FRANCISCO HERMOSISIMA, PETITIONER, VS. THE HON. COURT OF APPEALS, ET AL., RESPONDENTS.*G.R. No. 14628. September 30, 1960*

Ponente: CONCEPCION, J.

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An appeal by certiorari, taken by petitioner Francisco Hermosisima, from a decision of the Court of Appeals modifying that of the Court of First Instance of Cebu.

On October 4, 1954, Soledad Cagigas, hereinafter referred to as complainant, filed with said court of first instance a complaint for the acknowledgment of her child, Chris Hermosisima, as natural child of said petitioner, as well as for support of said child and moral damages for alleged breach of promise. Petitioner admitted the paternity of child and expressed willingness to support the later, but denied having ever promised to marry the complainant. Upon her motion, said court ordered petitioner, on October 27, 1954, to pay, by way of alimony pendente lite, P50.00 a month, which was, on February 16 1955, reduced to P30.00 a month. In due course, later on, said court rendered a decision the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered, declaring the child, Chris Hermosisima, as the natural daughter of defendant, and! confirming the order pendente lite, ordering defendant to pay to the said child, through plaintiff, the sum of thirty pesos (P30.00), payable on or before the fifth day of every month; sentencing defendant to pay to plaintiff the sum of FOUR THOUSAND FIVE HUNDRED PESOS (P4,500.00) for actual and compensatory damages; the sum of FIVE THOUSAND PESOS (P5,000.00) as moral damages; and the further sum of FIVE HUNDRED PESOS (P500.00) as attorney's fees for plaintiff, with costs against defendant."

On appeal taken by petitioner, the Court of Appeals affirmed this decision, except as to the actual and compensatory damages and the moral damages, which were increased to P5,614.25 and P7,000.00, respectively.

The main issue before us is whether moral damages are recoverable, under our laws, for breach of promise to marry. The pertinent facts are:

Complainant Soledad Cagigas, was born in July 1917. Since 1950, Soledad then a teacher in the Sibonga Provincial High School in Cebu, and petitioner, who was almost ten (10) years younger than she, used to go around together and were regarded as engaged, although he had made no promise of marriage prior thereto. In 1951, she gave up teaching and became a life insurance under writer in the City of Cebu, where intimacy developed among her and the petitioner, since one evening, in 1953, when after coming from the movies, they had sexual intercourse in his cabin on board M/V "Escaño," to which he was then attached as apprentice pilot. In February, 1954, Soledad advised petitioner that she was in the family way, whereupon he promised to marry her. Their child, Chris Hermosisima, was born on June 17, 1954, in a private maternity and clinic. However, subsequently, or on July 24, 1954, defendant married one Romanita Perez. Hence, the present action, which was commenced on or about October 4, 1954.

Referring now to the issue above referred to, it will be noted that the Civil Code of Spain permitted the recovery of damages for breach of promise to marry. Articles 43 and 44 of said Code provides:

ART. 43. "A mutual promise of marriage shall not give rise to an obligation to contract marriage. No court shall entertain any complaint by which the enforcement of such promise is sought."

ART. 44. "If the promise has been in a public or private instrument by an adult, or by a minor with the concurrence of the person whose consent is necessary for the celebration of the marriage, or if the banns have been published, the one who without just cause refuses to marry shall be obliged to reimburse the other for the expenses which he or she may have incurred by reason of the promised marriage.

"The action for reimbursement of expenses to which the foregoing article refers must be brought within one year, computed from the day of the refusal to celebrate the marriage."

Inasmuch as these articles were never in force in the Philipipnes, this Court ruled in *De Jesus vs. Syquia* (58 Phil., 866), that "the action for breach of promise to marry has no standing in the civil law, apart from the right to recover money or property advanced * * * upon the faith of such promise". The Code Commission charged with the drafting of the Proposed Civil Code of the Philippines deemed it best, however, to change the law thereon. We quote from the report of the Code Commission on said Proposed Civil Code:

"Articles 43 and 44 of the Civil Code of 1889 refer to the promise of marriage. But these articles are not in force in the Philippines. The subject is regulated in the proposed Civil Code not only as to the aspects treated of in said articles but also in other particulars. It is advisable to furnish legislative solutions to some questions that might arise relative to betrothal. Among the provisions proposed are: That authorizing the adjudication of moral damages, in case of breach of promise of marriage, and that creating liability for causing a marriage engagement to be broken."

Accordingly, the following provisions were inserted in said Proposed Civil Code, under Chapter I, Title III, Book I thereof:

"ART. 56. A mutual promise to marry may be made expressly or impliedly."

"ART. 57. An engagement to be married must be agreed x directly by the future spouses."

"ART. 58. A contract for a future marriage cannot, without the consent of the parent or guardian, be entered into by a male between the ages of sixteen and twenty years or by a female between the ages of sixteen and eighteen years. Without such consent of the parents or guardian, the engagement to marry cannot be the basis of a civil action for damages in case of breach of the promise."

"ART. 59. A promise to marry when made by a female under the age of fourteen years is not civilly actionable, even though approved by the parent or guardian."

"ART. 60. In cases referred to in the preceding articles, the criminal and civil responsibility of a male for seduction shall not be affected."

"ART. 61. No action for specific performance of a mutual promise to marry may be brought."

"ART. 62. An action for breach of promise to marry may be brought by the aggrieved party even though a minor without the assistance of his or her parent or guardian. Should the minor refuse to bring suit, the parent or guardian may institute the action."

"ART. 63. Damages for breach of promise to marry shall include not only material and pecuniary losses but also compensation for mental and moral suffering."

ART. 64. Any person, other than a rival, the parents, guardians and grandparents, of the affianced parties, who

causes a marriage engagement to be broken shall be liable for damages, both material and moral, to the engaged person who is rejected."

"ART. 65. In case of breach of promise to marry, the party breaking the engagement shall be obliged to return what he or she has received from the other as gift on account of the promise of the marriage."

These articles were, however, eliminated in Congress. The reason therefor are set forth in the report of the corresponding Senate Committee, from which we quote:

"The elimination of this Chapter is proposed. That breach of promise to marry is not actionable has been definitely decided in the case of *De Jesus vs. Syquia*, 58 Phil., 866. The history of breach of promise suits in the United States and in England has shown that no other action lends itself more readily to abuse by designing women and unscrupulous men. It is this experience which has led to the abolition of rights of action in the so-called Balm suits in many of the American States.

See statutes of:

Florida	1945— pp. 1342-1344
Maryland	1945— pp.1759-1762
Nevada	1943— p. 75
Maine	1941— pp. 140-141
New Hampshire	1941— p. 223
California	1939— p. 1245
Massachusetts	1938— p. 326
Indiana	1936— p. 1009
Michigan	1935— p. 201
New York	1935
Pennsylvania	p. 450

"The Commission perhaps thought that it has followed the more progressive trend in legislation when it provided for breach of promise to marry suits. But it is clear that the creation of such causes of action at a time when so many States, in consequence of years of experience are doing away with them, may well prove to be a step in the wrong direction. (Congressional Record, Vol. IV, No. 79, Thursday, May 19, 1949, p. 2352.)"

The views thus expressed were accepted by both houses of Congress. In the light of the clear and manifest intent of our law making body not to sanction actions for breach of promise to marry, the award of moral damages made by the lower court is, accordingly, untenable. The Court of Appeals said in justification of said award:

"Moreover, it appearing that because of defendant-appellant's seductive powers, plaintiff-appellee, overwhelmed by her love for him finally yielded to his sexual desires in spite of her age and self-control, she being a woman after all, we hold that said defendant-appellant is liable for seduction and, therefore, moral damages may be recovered from him under the provisions of Article 2219, paragraph 3, of the new Civil Code."

Apart from the fact that the general tenor of said Article 2219, particularly the paragraphs preceding and those following the one cited by the Court of Appeals, and the language used in said paragraph strongly indicates that the "seduction" therein contemplated is the crime punished as such in Articles 337 and 338 of the Revised Penal

Code, which admittedly does not exist in the present case, we find ourselves unable to say that petitioner is morally guilty of seduction, not only because he is approximately ten (10) years younger than the complainant—who was around thirty-six (36) years of age, and as highly enlightened as a former high school teacher and a life insurance agent are supposed to be—when she became intimate with petitioner, then a mere apprentice pilot, but, also, because, the court of first instance found that, complainant "surrendered herself" to petitioner because, "overwhelmed by her love" for him, she "wanted to bifid" him "by paying a fruit of their engagement even before they had the benefit of clergy."

The court of first instance sentenced petitioner to pay the following: (1) a monthly pension of P30.00 for the support of the child; (2) P4,500, representing the income that complainant had allegedly failed to earn during her pregnancy and shortly after the birth of the child, as actual and compensatory damages; (3) P5,000, as moral damages; and (4) P500.00, as attorney's fees. The Court of Appeals added to the second item the sum of P1,114.25—consisting of P144.20, for hospitalization and medical attendance, in connection with the parturition, and the balance representing expenses incurred to support the child—and increased the moral damages to P7,000.00.

With the elimination of this award for moral damages, the decision of the Court of Appeals is hereby affirmed, therefore, in all other respects, without special pronouncement as to costs in this instance. It is so ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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