

APOLONIO TANJANCO, PETITIONER, VS. HON. COURT OF APPEALS AND ARACELI SANTOS, RESPONDENTS.

G.R. No. 18630. December 17, 1966

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

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

Appeal from a decision of the Court of Appeals (in its Case No. 27210-R) revoking an order of the Court of First Instance of Rizal (in Civil Case No. Q-4797) dismissing appellant's action for support and damages.

The essential allegations of the complaint are to the effect that, from December, 1957, the defendant (appellee herein), Apolonio Tanjanco, courted the plaintiff, Araceli Santos, both being of adult age; that "defendant expressed and professed his undying love and affection for plaintiff who also in due time reciprocated the tender feelings"; that in consideration of defendant's promises of marriage plaintiff consented and acceded to defendant's pleas for carnal knowledge; that regularly until December 1959, through his protestations of love and promises of marriage, defendant succeeded in having carnal access to plaintiff, as a result of which the latter conceived a child; that due to her pregnant condition, to avoid embarrassment and social humiliation, plaintiff had to resign her job as secretary in IBM Philippines, Inc., where she was receiving P230.00 a month; that thereby plaintiff became unable to support herself and her baby; that due to defendant's refusal to marry plaintiff, as promised, the latter suffered mental anguish, besmirched reputation, wounded feelings, moral shock, and social humiliation. The prayer was for a decree compelling the defendant to recognize the unborn child that plaintiff was bearing; to pay her not less than P430.00 a month for her support and that of her baby, plus P100,000.00 in moral and exemplary damages, plus P10,000.00 attorney's fees.

Upon defendant's motion to dismiss, the court of first instance dismissed the complaint for failure to state a cause of action.

Plaintiff Santos duly appealed to the Court of Appeals, and the latter ultimately decided the case, holding with the lower court that no cause of action was shown to compel recognition of a child as yet unborn, nor for its support, but decreed that the complaint did state a cause of action for damages, premised on Article 21 of the Civil Code of the Philippines, prescribing as follows:

"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 Court of Appeals, therefore, entered judgment setting aside the dismissal and directing the court of origin to proceed with the case.

Defendant, in turn, appealed to this Court, pleading that actions for breach of a promise to marry are not permissible in this jurisdiction, and invoking the rulings of this Court in *Estopa vs. Piansay*, L-14733, September 30, 1960; *Hermosisima vs. Court of Appeals*, L-14628, January 29, 1962; and *De Jesus vs. SyQuia*, 58 Phil. 886.

We find this appeal meritorious.

In holding that the complaint stated a cause of action for damages, under Article 21 above mentioned, the Court of Appeals relied upon and quoted from the memorandum submitted by the Code Commission to the Legislature in 1949 to support the original draft of the Civil Code. Referring to Article 23 of the draft (now Article 21 of the Code), the Commission stated:

"But the Code Commission has gone farther than the sphere of wrongs defined or determined by positive law. Fully sensible that there are countless gaps in the statutes, which leave so many victims of moral wrongs helpless, even though they have actually suffered material and moral injury, the Commission has deemed it necessary, in the interest of justice, to incorporate in the proposed Civil Code the following rule:

'ART. 23. 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.'

"An example will illustrate the purview of the foregoing norm: 'A' seduces the nineteen-year old daughter of 'X'. A promise of marriage either has not been made, or can not be proved. The girl becomes pregnant. Under the present laws, there is no crime, as the girl is above eighteen years of age. Neither can any civil action for breach of promise of marriage be filed. Therefore, though the grievous moral wrong has been committed, and though the girl and her family have suffered incalculable moral damage, she and her parents cannot bring any action for damages. But under the proposed article, she and her parents would have such a right of action."

The Court of Appeals seems to have overlooked that the example set forth in the Code Commission's memorandum refers to a tort upon a minor who has been seduced. The essential feature is seduction, that in law is more than mere sexual intercourse, or a breach of a promise of marriage; it connotes essentially the idea of deceit, enticement, superior power or abuse of confidence on the part of the seducer to which the woman has yielded (U.S. vs. Buenaventura, 27 Phil. 121; U. S. vs. Arlante, 9 Phil. 595).

It has been ruled in the Buenaventura case (supra) that —

"To constitute seduction there must in all cases be some sufficient promise or Inducement and the woman must yield because of the promise or other inducement. If she consents merely from carnal lust and the intercourse is from mutual desire, there is no seduction (43 Cent Dig. tit. Seduction, par. 56). She must be induced to depart from the path of virtue by the use of some species of arts, persuasions and wiles, which are calculated to have and do have that effect, and which result in her ultimately submitting her person to the sexual embraces of her seducer" (27 Phil. 123).

And in American Jurisprudence we find:

"On the other hand, in an action by the woman, the enticement, persuasion or deception is the essence of the injury; and a mere proof of intercourse is insufficient to warrant a recovery.

Accordingly it is not seduction where the willingness arises out of sexual desire or curiosity of the female, and the defendant merely affords her the needed opportunity for the commission of the act. It has been emphasized that to allow a recovery in all such cases would tend to the demoralization of the female sex, and would be a reward for unchastity by which a class of adventuresses would be swift to profit." (47 Am. Jur. 662)

Bearing these principles in mind, let us examine the complaint. The material allegations there are as follows:

- I. That the plaintiff is of legal age, single, and residing at 56 South E. Diliman, Quezon City, while defendant is also of legal age, single and residing at 525 Padre Faura, Manila, where he may be served with summons;
- II. That the plaintiff and the defendant became acquainted with each other sometime in December, 1957 and soon thereafter, the defendant started visiting and courting the plaintiff;
- III. That the defendant's visits were regular and frequent and in due time the defendant expressed and professed

his undying love and affection for the plaintiff who also in due time reciprocated the tender feelings;

IV. That in the course of their engagement, the plaintiff and the defendant as are wont of young people in love had frequent outings and dates, became very close and intimate to each other and sometime in July, 1958, in consideration of the defendant's promises of marriage, the plaintiff consented and acceded to the former's earnest and repeated pleas to have carnal knowledge with him;

V. That subsequent thereto and regularly until about July, 1959 except for a short period in December, 1958 when the defendant was out of the country, the defendant through his protestations of love and promises of marriage succeeded in having carnal knowledge with the plaintiff;

VI. That as a result of their intimate relationship, the plaintiff started conceiving which was confirmed by a doctor sometime in July, 1959;

VII. That upon being certain of her pregnant condition, the plaintiff informed the defendant and pleaded with him to make good his promises of marriage, but instead of honoring his promises and righting his wrong, the defendant stopped and refrained from seeing the plaintiff, since about July, 1959 has not visited the plaintiff and to all intents and purposes has broken their engagement and his promises."

Over and above the partisan allegations, the facts stand out that for one whole year, from 1958 to 1959, the plaintiff-appellee, a woman of adult age, maintained intimate sexual relations with appellant, with repeated acts of intercourse. Such conduct is incompatible with the idea of seduction. Plainly there is here voluntariness and mutual passion; for had the appellant been deceived, had she surrendered exclusively because of the deceit, artful persuasions and wiles of the defendant, she would not have again yielded to his embraces, much less for one year, without exacting early fulfillment of the alleged promises of marriage, and would have cut short all sexual relations upon finding that defendant did not intend to fulfil his promises. Hence, we conclude that no case is made under Article 21 of the Civil Code, and no other cause of action being alleged, no error was committed by the Court of First Instance in dismissing the complaint.

Of course, the dismissal must be understood as without prejudice to whatever actions may correspond to the child of the plaintiff against the defendant-appellant, if any. On that point, this Court makes no pronouncement, since the child's own rights are not here involved.

FOR THE FOREGOING REASONS, the decision of the Court of Appeals is reversed, and that of the Court of First Instance is affirmed. No costs.

Concepcion, C.J., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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