

THE UNITED STATES AND MARIA DE JESUS, PLAINTIFFS AND APPELLEES, VS. GASPAR ALVIR, DEFENDANT AND APPELLANT.

G.R. No. 3981. January 14, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was accused before the court of the justice of the peace of Bulacan, Province of Bulacan, of the crime of seduction, and, having been found guilty, he was sentenced to three months of *arresto mayor*, to pay an "indemnity of P1,000 to the offended party, to acknowledge the offspring, to make an allowance of P15 monthly for subsistence until the child becomes of age, and to pay the costs of the proceedings."

From the above decision the defendant appealed to the Court of First Instance of said province. Upon the evidence adduced at the trial the judge also found the accused guilty of the crime of seduction and sentenced him to three months of *arresto mayor*, "with the accessory penalties thereof, to indemnify the girl, Maria Sempia, in the sum of P500, to recognize the offspring, to allow her for the subsistence of said child the sum of P15 per month, and to pay the costs."

The defendant did not appeal nor attempt to appeal from the judgment of the court below. After having undergone his term of imprisonment, and upon a writ of attachment being issued against his property to enforce the payment of the P500, which, according to the judgment, he was required to pay the offended party, he filed a motion asking the court to permit him to keep the child in his own house and to be released from the obligation of paying to the offended party the P15 monthly, as ordered by the court below. The accused based his claim on article 149 of the Civil Code. The motion of the accused was overruled by the court in the following terms:

"The court holds that such option can not be exercised by an accused against whom final judgment ordering him to support the offspring has been entered in a cause instituted against him for seduction, ravishment, or rape, in view of the fact that the provision contained in article 149 is not applicable to cases wherein the obligation to provide support constitutes one of the findings of the decision rendered in criminal causes."

From the above decision the accused has appealed to this court, and the question at issue now is, whether the party who provides the subsistence is in this case entitled to claim that the person who enjoys the same shall live with him in his own house, and there receive the support which he is under obligation to provide.

It is a juridical maxim, *distingue tempora et concordabis jura*. The Penal Code was promulgated as a law for the Philippines in 1884, and is anterior to the Civil Code, which was not enforced in the Philippines until the latter part of 1889.

Article 449 of the Penal Code as applied by the court below in connection with the question of support provides that: "Those guilty of * * * seduction * * * shall also be condemned, by way of indemnification: 1. * * * 3. In all cases, to support the offspring." Hence the sentence imposing a monthly pension of, 15 for support, the payment being executory, is the subject of this appeal.

As to how such pension for support should be paid, according to the provisions of the civil law to which the Penal Code might have referred by its article 449 at the time when it went into force, is shown by two decisions of the supreme court of Spain construing a provision in the law of the Partidas, which was the one then in force in matters of support to be furnished by parents to their children.

After having been convicted of the crime for which he was sentenced, the accused married another woman.

The said high tribunal, in its decision of the 26th of April, 1866, when deciding a case in which the natural father claimed the right to have with him the daughter for whose subsistence he paid a pension, said:

"First, that Law 3, title 19, of the Partida 4, upon determining the cases wherein a father or mother may respectively 'maintain and keep with him or her his or her children,' as therein specified, refers to such children as were had in marriage, whatever their age may be, if the marriage is thereafter dissolved for some good reason. Second, that neither the letter nor the spirit of said law can ever apply to natural children, either because the father does not exercise over them parental authority as expressly provided in Law 2, title 17 of said Partida, or because there is no legal provision depriving the mother of the care and education of such class of children, or, finally, because it would be contrary to nature to deprive the mother of the favorite object of her maternal love when, through no fault of her own, can the punishment which the law imposes on the woman who gives cause for divorce be inflicted on her. Third, because the father who marries another woman, not the mother of his natural child, creates another obstacle to the exercise of parental authority over his said child. Fourth, a judgment not in conformity with said doctrines would violate the provisions of said Law 5, Title 10, Partida 4."

And in the judgment of the 22d of December, 1865, the court decided :

"First, that where the question of nourishment is complicated with that of the rights of parental authority, it can not alone be decided by laws treating of support, but those which refer to parental authority must also be taken into consideration, because the latter have not been repealed by the former nor are the provisions of the one incompatible with those of the other, notwithstanding the fact that the law referring to the question of nourishment should be enforced in different ways, according to whether or not the children are under the control of the parents. Second, that when the children are not under the control of their parents, as the latter can not designate the place where they should reside, neither can they demand that the children receive support in their house and in their company ; but, when the children are under the control of the parents, both of them have rights which must be respected, unless there should be just cause for withholding them."

The obligation prescribed by article 449 of the Penal Code was construed, prior to the enforcement of the Civil Code, in the light of the said doctrines. And after the enforcement of the last-named code it should be construed in a similar manner, because the rule of its article 149 is not absolute.

In a case similar to this (with the exception of the conviction in criminal proceedings), a natural father claimed the right to have with him his natural daughter, after marrying a woman other than the mother of said daughter, in order to continue to provide the support, and to the order of the court overruling his request he excepted and alleged that article 149 of the Civil Code had been violated; but the same high tribunal by its decision of December 5, 1903, held:

"That in accordance with the ruling of the supreme court of Spain in its decisions dated May 11, 1897, November 25, 1899, and July 5, 1901, the option which article 149 grants the person obliged to furnish nourishment, between paying the pension fixed or receiving and keeping in his own house the party who is entitled to the same, is not so absolute as to prevent cases being considered wherein, either because this right would be opposed to the exercise of a preferential right or because of the existence of some justifiable cause morally opposed to the removal of the party enjoying the maintenance, the right of selection must be understood as being thereby restricted.

"Whereas the only question discussed in the case which gave rise to this appeal was whether there was any reason to prevent the exercise of the option granted by article 140 of the Civil Code to the person obliged to furnish subsistence, to receive and maintain in his own house the one who is entitled to receive it; and inasmuch as nothing has been alleged or discussed with regard to the parental authority of Pedro Alcantara Calvo, which e has not exercised, and it having been set forth that the natural father simply claims his child for the purpose of thus better attending to her maintenance, no action having been taken by him toward providing the support until, owing to such negligence, the mother was obliged to demand it; it is seen that these circumstances, together with the fact of the marriage of Pedro Alcantara, and that it would be difficult for the mother to maintain relations with her daughter, all constitute an impediment of such a nature as to prevent the exercise of the option in the present case, without prejudice to such decision as may be deemed proper with regard to the other questions previously cited in respect to which no opinion should be expressed at this time."

Therefore, the judgment appealed from is hereby affirmed with costs, and it is so ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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