

LUISA TENGCO, PLAINTIFF AND APPELLEE, VS. VICENTE SANZ, DEFENDANT AND APPELLANT.

G.R. No. 4529. August 27, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff alleged in her complaint, and the court below found, "that the defendant proposed marriage to the plaintiff, who accepted the proposition, and thereafter, in the year 1905, upon the promise of the defendant to marry her, the plaintiff, she had sexual intercourse with him, and as a result of the sexual intercourse thus had a child was born on the 19th day of June, 1906." The "plaintiff asked judgment for P4,000 damages, and that the defendant be compelled to recognize the child as his and to pay the amount of P30 a month for its support.

Judgment was rendered in favor of the plaintiff, ordering the defendant to pay P25 a month for the support of the child. No damages were allowed to the plaintiff because, as the court said, there was not sufficient evidence upon which to base a finding in that respect. There was no special declaration made in the judgment to the effect that the defendant should recognize the child, but the court found that it was his child.

This suit, so far as it is one to recover damages for the seduction of the plaintiff under promise of marriage, can not be maintained. (*Btitarra vs. Marcos*, 7 Phil. Rep., 156.)

Nor can it be maintained so far as it is an action to compel the recognition of the child and the payment of money for its support, for the evidence does not bring it within the terms of article 135 of the Civil Code.

The plaintiff was more than 30 years of age, so that the provisions of articles 443 and 449 of the Penal Code are not applicable.

The defendant at the trial below objected to all evidence looking to the investigation of the paternity of this child. The court overruled the objection and admitted the evidence. This was error. All of that evidence was incompetent and should have been ruled out. (*Infante vs. Figueras*, 4 Phil. Rep., 738; *Buenaventura vs. Urbano*, 5 Phil. Rep., 1; *Mendoza vs. Ibañez*, 4 Phil. Rep., 666.)

No writing, such as is mentioned in article 135, was produced to prove that the defendant was the father of the child.

The evidence to show that the child had constantly possessed the status of a natural child was the following: After the child was born, the defendant went to the house of the mother and paid her P5 to pay the midwife. She lived in the same house with the defendant in the month of September, after the child was born, for twenty-one days, at the end of which she was ejected therefrom.

Whether she supported herself during that time is not quite clear from her testimony. She said:

"He supported me; we lived together in one house and of course I ate when they ate; he is the one who manages the property of his mother, and where is that going when his mother dies? And on Thursday and

Friday I go to help my mother in her work, and when I return I always have money that my parents give me, and that helps."

A witness for the plaintiff testified that she had seen the defendant in the house of the latter holding the child in his arms. This is all the evidence there is in the case to show the constant possession by the child of the status' of a natural child, and it falls far short of what the law requires in this respect, (*Buenaventura vs. Urbano*, 5 Phil. Rep., 1; *Benedicto vs. De la Rama*, 4 Phil. Rep., 746; *Mendoza vs. Ibañez*, 4 Phil. Rep., 6G6.)

The judgment of the court below is reversed and the defendant is acquitted of the complaint, with the costs of first instance against the plaintiff. No costs will be allowed to either party in this court. So ordered.

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

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