

**FELICIANO SANCHEZ, PETITIONER AND APPELLANT, VS.
FRANCISCO ZULUETA, JUDGE OF FIRST INSTANCE OF CAVITE,
JOSEFA DIEGO AND MARIO SANCHEZ, ASSISTED BY HIS MOTHER,
JOSEFA DIEGO, AS G...**

G.R. No. 45616. May 16, 1939

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

In civil case No. 3199 of the Court of First Instance of Cavite, wherein Josefa Diego and Mario Sanchez are plaintiffs and Feliciano Sanchez is defendant, the plaintiffs ask that the defendant be sentenced to pay them a monthly allowance for support.

The complaint alleges that the plaintiffs are the wife and child, respectively, of the defendant; that the latter, since 1932, refused and still refuses to support the plaintiffs; that the latter have no means of subsistence, while the defendant receives from the United States Army a monthly pension of P174.20; that the defendant abandoned the plaintiffs without any justifiable cause and now refuses to allow them to live with him.

The defendant alleges, as special defense, that the plaintiff Josefa Diego abandoned the conjugal home on October 27, 1930, without his knowledge or consent, because she committed adultery with Macario Sanchez, with whom she had, as a result of the illicit relations, a child which is the other plaintiff Mario Sanchez.

The month following the filing of the complaint, the plaintiffs asked the court to compel the defendant to give them, by way of allowance pendente lite, the sum of P50 a month. In opposition to his petition, the defendant alleged that Mario Sanchez is not his legitimate child but is the adulterous child of the plaintiff with Macario Sanchez, and he asked for an opportunity to adduce evidence in support of this defense. The court, without acceding to this petition of the defendant to adduce evidence, favorably acted upon the application of the plaintiffs and ordered the defendant to pay a monthly allowance pendente lite of P50 to the plaintiffs, from July 1, 1936. In view of these facts, the defendant filed a petition for prohibition before the Court of Appeals against the judge of the Court of First Instance and the plaintiffs. The Court of Appeals denied the petition, and from this resolution, the defendant comes to this court on certiorari.

We are of the opinion that the Court of Appeals erred in not allowing the defendant to present his evidence for the purpose of determining whether it is sufficient prima facie to overcome the application. Adultery on the part of the wife is a valid defense against an action for support (*Quintana vs. Lerma*, 24 Phil, 285). Consequently, as to the child, it is also a defense that it is the fruit of such adulterous relations, for in that case, it would not be the child of the defendant and, hence, would not be entitled to support as such. But as this defense should be established, and not merely alleged, it would be unavailing if proof thereof is not permitted. It is not of course necessary to go fully into the merits of the case, it being sufficient that the court ascertain the kind and amount of evidence which it may deem sufficient to enable it to justly resolve the application, one way or the other, in view of the merely provisional character of the resolution to be entered.

Although mere affidavits may satisfy the court to pass upon the application, nevertheless, the failure to accompany the opposition therewith did not justify the court in ignoring said opposition, just because of this omission, inasmuch as an opportunity to present evidence has been asked. It may be that the defendant could not get hold of affidavits in support of his opposition, but he may have on hand other evidence of greater weight.

If the defendant has a valid defense which calls for proof, and he asks for an opportunity to present evidence, it is error to deny him this opportunity.

The decision rendered by the Court of Appeals is reversed, and it is ordered that the petitioner be given an opportunity to present evidence in support of his defense against the application for support pendente lite, to the extent which the court may determine, without special pronouncement as to the costs. So ordered.

Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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