

**AMELITA CONSTANTINO AND MICHAEL CONSTANTINO, THE
LATTER REPRESENTED HEREIN BY THE FORMER, HIS MOTHER AND
NATURAL GUARDIAN, PETITIONERS, VS. IVAN MENDEZ AND THE
HONOR-ABLE COURT ...**

G.R. No. 57227. May 14, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari questioning the decision* dated April 30, 1981 of the Court of Appeals in CA-G.R. No. 61552-R which dismissed petitioner's complaint and set aside the resolution** dated October 21, 1976 of the then Court of First Instance of Davao, 16th Judicial District, amending the dispositive portion of its decision dated June 21, 1976 and ordering private respondent Ivan Mendez: (1) to acknowledge the minor Michael Constantino as his illegitimate child; (2) to give a monthly support of P300.00 to the minor child; (3) to pay complainant Amelita Constantino the sum of P8,200.00 as actual and moral damages; and (4) to pay attorney's fees in the sum of P5,000 plus costs.

It appears on record that on June 5, 1975, petitioner Amelita Constantino filed an action for acknowledgment, support and damages against private respondent Ivan Mendez. The case was filed with the then CFI of Davao, 10th Judicial District and docketed as Civil Case No. 8881. In her complaint, Amelita Constantino alleges, among others, that sometime in the month of August, 1974, she met Ivan Mendez at Tony's Restaurant located at Sta. Cruz, Manila, where she worked as a waitress; that the day following their first meeting, Ivan invited Amelita to dine with him at Hotel Enrico where he was billeted; that while dining, Ivan professed his love and courted Amelita; that Amelita asked for time to think about Ivan's proposal; that at about 11:00 o'clock in the evening, Amelita asked Ivan to bring her home to which the latter agreed, that on the pretext of getting something, Ivan brought Amelita inside his hotel room and through a promise of marriage succeeded in having sexual intercourse with the latter; that after the sexual contact, Ivan confessed to Amelita that he is a married man; that they repeated their sexual contact in the months of September and November, 1974, whenever Ivan is in Manila, as a result of which Amelita got pregnant; that her pleas for help and support fell on deaf ears; that Amelita had no sexual relations with any other man except Ivan who is the father of the child yet to be born at the time of the filing of the complaint; that because of her pregnancy, Amelita was forced to leave her work as a waitress; that Ivan is a prosperous businessman of Davao City with a monthly income of P5,000 to P8,000. As relief, Amelita prayed for the recognition of the unborn child, the payment of actual, moral and exemplary damages, attorney's fees plus costs.

In his answer dated August 5, 1975, Ivan admitted that he met Amelita at Tony's Cocktail Lounge but denied having sexual knowledge or illicit relations with her. He prayed for the dismissal of the complaint for lack of cause of action. By way of counterclaim, he further prayed for the payment of exemplary damages and litigation expense including attorney's fees for the filing of the malicious complaint.

On September 1, 1975, Amelita Constantino filed a motion for leave to amend the complaint impleading as co-plaintiff her son Michael Constantino who was born on August 3, 1975. In its order dated September 4, 1975, the trial court admitted the amended complaint.

On September 11, 1975, Ivan Mendez filed his answer to the amended complaint reiterating his previous answer denying that Michael Constantino is his illegitimate son.

After hearing, the trial court rendered a decision dated June 21, 1976, the dispositive portion of which reads, viz:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff Amelita Constantino and against defendant Ivan Mendez, ordering the latter to pay Amelita Constantino the sum of P8,000.00 by way of actual and moral damages; and, the sum of P3,000.00, as and by way of attorney’s fees. The defendant shall pay the costs of this suit.

SO ORDERED.”

From the above decision, both parties filed their separate motion for reconsideration. Ivan Mendez anchored his motion on the ground that the award of damages was not supported by evidence. Amelita Constantino, on the other hand, sought the recognition and support of her son Michael Constantino as the illegitimate son of Ivan Mendez.

In its resolution dated October 21, 1976, the trial court granted Amelita Constantino’s motion for reconsideration, and amended the dispositive portion of its decision dated June 21, 1976 to read as follows, viz:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff Amelita Constantino and plaintiff-minor Michael Constantino, and against defendant Ivan Mendez ordering the latter to pay Amelita Constantino the sum of P8,000.00 by way of actual and moral damages and the sum of P200.00 as and by way of payment of the hospital and medical bills incurred during the delivery of plaintiff-minor Michael Constantino; to recognize as his own illegitimate child the plaintiff-minor Michael Constantino who shall be entitled to all the rights, privileges and benefits appertaining to a child of such status; to give a permanent monthly support in favor of plaintiff Michael Constantino the amount of P300.00; and the sum of P5,000.00, as and by way of attorney’s fees. The defendant shall pay the costs of this suit.

Let this Order form part of the decision dated June 21, 1976.

SO ORDERED.”

On appeal to the Court of Appeals, the above amended decision was set aside and the complaint was dismissed. Hence, this petition for review.

Basically, the issue to be resolved in the case at bar is whether or not the Court of Appeals committed a reversible error in setting aside the decision of the trial court and in dismissing the complaint.

Petitioners contend that the Court of Appeals erred in reversing the factual findings of the trial court and in not affirming the decision of the trial court. They also pointed out that the appellate court committed a misapprehension of facts when it concluded that Ivan did not have sexual access with Amelita during the first or second week of November, 1976 (should be 1974), the time of the conception of the child.

It must be stressed at the outset that factual findings of the trial court have only a persuasive and not a conclusive effect on the Court of Appeals. In the exercise of its appellate jurisdiction, it is the duty of the Court of Appeals to review the factual findings of the trial court and rectify the errors it committed as may have been properly assigned and as could be established by a re-examination of the evidence on record. It is the factual findings of the Court of Appeals, not those of the trial court, that as a rule are considered final and conclusive even on this Court

(Hermo v. Hon. Court of Appeals, et al., 155 SCRA 24 [1987]). This being a petition for certiorari under Rule 45 of the Rules of Court, this Court will review only errors of law committed by the Court of Appeals. It is not the function of this Court to re-examine all over again the oral and documentary evidence submitted by the parties unless the findings of facts of the Court of Appeals is not supported by the evidence on record or the judgment is based on misapprehension of facts (Remalante v. Tibe, et al., 158 SCRA 138 [1988]; Hernandez v. Court of Appeals, et al., 149 SCRA 97 [1987]).

It is the conclusion of the Court of Appeals, based on the evidence on record, that Amelita Constantino has not proved by clear and convincing evidence her claim that Ivan Mendez is the father of her son Michael Constantino. Such conclusion based on the evaluation of the evidence on record is controlling on this Court as the same is supported by the evidence on record. Even the trial court initially entertained such posture. It ordered the recognition of Michael as the illegitimate son of Ivan only when acting on the motions for reconsideration, it reconsidered, on October 21, 1976, its earlier decision dated June 21, 1976. Amelita's testimony on cross-examination that she had sexual contact with Ivan in Manila in the first or second week of November, 1974 (TSN, December 8, 1975, p. 108) is inconsistent with her response that she could not remember the date of their last sexual intercourse in November, 1974 (Ibid, p. 106). Sexual contact of Ivan and Amelita in the first or second week of November, 1974 is the crucial point that was not even established on direct examination as she merely testified that she had sexual intercourse with Ivan in the months of September, October and November, 1974.

Michael Constantino is a full-term baby born on August 3, 1975 (Exhibit 6) so that as correctly pointed out by private respondent's counsel, citing medical science (Williams Obstetrics, Tenth Ed., p. 198) to the effect that "the mean duration of actual pregnancy, counting from the day of conception must be close to 267 days", the conception of the child (Michael) must have taken place about 267 days before August 3, 1975 or sometime in the second week of November, 1974. While Amelita testified that she had sexual contact with Ivan in November, 1974, nevertheless said testimony is contradicted by her own evidence (Exh. F), the letter dated February 11, 1975, addressed to Ivan Mendez requesting for a conference, prepared by her own counsel Atty. Roberto Sarenas to whom she must have confided the attendant circumstances of her pregnancy while still fresh in her memory, informing Ivan that Amelita is four (4) months pregnant so that applying the period of the duration of actual pregnancy, the child was conceived on or about October 11, 1974.

Petitioner's assertion that Ivan is her first and only boyfriend (TSN, December 8, 1975, p. 65) is belied by Exhibit 2, her own letter addressed to Mrs. Mendez where she revealed the reason for her attachment to Ivan who possessed certain traits not possessed by her boyfriend. She also confided that she had a quarrel with her boyfriend because of gossips so she left her work. An order for recognition and support may create an unwholesome atmosphere or may be an irritant in the family or lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence. The burden of proof is on Amelita to establish her affirmative allegations that Ivan is the father of her son. Consequently, in the absence of clear and convincing evidence establishing paternity or filiation, the complaint must be dismissed.

As regards Amelita's claim for damages which is based on Articles 19* & 21** of the Civil Code on the theory that through Ivan's promise of marriage, she surrendered her virginity, we cannot but agree with the Court of Appeals that mere sexual intercourse is not by itself a basis for recovery. Damages could only be awarded if sexual intercourse is not a product of voluntariness and mutual desire. At the time she met Ivan at Tony's Restaurant, Amelita was already 28 years old and she admitted that she was attracted to Ivan (TSN, December 8, 1975, p. 83). Her attraction to Ivan is the reason why she surrendered her womanhood. Had she been induced or deceived because of a promise of marriage, she could have immediately severed her relation with Ivan when she was informed after their first sexual contact sometime in August, 1974, that he was a married man. Her

declaration that in the months of September, October and November, 1974, they repeated their sexual intercourse only indicates that passion and not the alleged promise of marriage was the moving force that made her submit herself to Ivan.

WHEREFORE, the instant petition is Dismissed for lack of merit.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Davide, Jr., and Romero, JJ., concur.

* Penned by Associate Justice Simeon Gopengco and concurred in by Associate Justices Oscar Victoriano and Jose Melo

** Issued by Judge Antonio M. Martinez

* Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

** Article 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 damages.

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