

4 Phil. 746

[G.R. No. 2078. September 07, 1905]

VICENTE BENEDICTO, PLAINTIFF AND APPELLANT, VS. ESTEBAN DE LA RAMA ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

Jesus Tejico was born on the 6th day of August, 1894. His mother is Encarnacion Tejico. Isidro de la Rama died on the 10th of June, 1897. This action was brought on the 19th day of February, 1904, by Jesus Tejico, through his guardian, against the heirs of Isidro de la Rama, to compel the recognition of the plaintiff as the natural child of Don Isidro. The complaint was based upon the three cases mentioned in article 135 of the Civil Code. Judgment was entered in the court below in favor of the defendants, and the plaintiff has brought this case here by bill of exceptions. There was no motion for a new trial made in the court below, but the appellant relies upon exceptions taken to rulings of the court excluding evidence.

The only document presented by the plaintiff to prove his case under the first paragraph of article 135 was the letter marked "Exhibit 8," which is as follows :

"MANILA, 16 de Octubre de 1894

"Mi

Querida Cana : Contesto tus cartas, que he recibido con bastante retraso,, y me alegro mucho que hayas salido del paso conservando al pequeno bien como yo deseo.

“Cuanto deseo abrazarte pronto como tu sabes que la quiero pero los intereses de la casa, como tambien los disgustos que me estan dando mis hijos que tu no ignoras, me detiene por ahora volver en esa, pero tan pronto mi animo calme enseguida me retiro, asi te suplico tenga un poco mas de paciencia porque sin duda ninguna procurare volver pronto y gozaremos, cuida al nino como Dios manda y procura conservar bien tu honra como es debido. Ten cuidado de no admitir mas visitas que el primo Santos y asi conservaras mi carino de veras, otro vapor te escribire mas extenso hoy no puedo disponer de tiempo.

“TUYO

ISIDRO.”

It was proved that this letter was in the handwriting of Don Isidro, and was addressed to the mother of the plaintiff. A reading of it is sufficient to show that in it Don Isidro did not expressly recognize the plaintiff as his child. (*Buenaventura vs. Urbano*^[1] (No. 2205), just decided.)

To prove his case under the second paragraph of article 135, plaintiff proved that Don Isidro de la Rama lived in Manila from the time of the birth of the plaintiff until the death of Don Isidro, and went to Iloilo only twice during that period. The plaintiff then offered to prove that upon one of his visits he went to the house of the mother of plaintiff, in Molo, asked where his child was, was taken into a room where the child was sleeping, and that he kissed the child, and said that it resembled his other son Isidro; that afterwards, on the same day, he gave to the mother of the child 150 pesos, which he said was for the support of the child until he should send more money. The court rejected this evidence, to which the plaintiff excepted.

The plaintiff also offered to prove that Don Isidro paid money for the support of the mother and the purchase of certain articles for her, before the child was born; that he visited Iloilo twice after the birth of the child; that on the first occasion he gave the mother for its support 150 pesos, and on the second 200 pesos; that he stated in these

interviews to the mother, in the presence of other witnesses, that he was the father of the child, and that he would always take care of it; that afterwards he sent money from Manila to the mother in Molo, for the purpose of supporting and maintaining the child. The court rejected this evidence, to which the plaintiff excepted.

The plaintiff also offered in evidence twelve letters proved to have been written by Don Isidro to the mother of the plaintiff. These were all rejected, to the rejection of which the plaintiff excepted. Seven of them were In the others no mention whatever was made of the child. In the others no mention whatever was made of the child They indicate that certain relations existed between the mother of the plaintiff and Don Isidro, but nothing in regard to the plaintiff.

An examination of the case of *Buenaventura vs. Urbano*, above cited, will show that this evidence falls far short of proving the continuous possession of the status of a natural child. As was said in that case, it is not sufficient to prove that the defendant, Don Isidro, was the father of the child, and that is practically all that the evidence offered tended to show.

In the case of *Llorente vs. Rodriguez*^[1] (2 Off. Gaz., 535), cited by the appellant in his brief, the court was considering the case of a child born before the Civil Code went into effect, and of the obligation of the mother to recognize it. It therefore has no bearing upon this case.

To support the complaint so far as it is based upon the third case mentioned in article 135, viz, the cases provided for by the Penal Code, the plaintiff offered to prove that in the year 1893 Don Isidro de la Rama visited the house of the mother at Molo, abducted her, and carried her away by force. The court rejected this evidence, to which ruling the plaintiff excepted.

Article 449 of the Penal Code provides as follows: "Los reos de violacion, estupro o rapto seran tambien condenados por via de indemnizacion:

“1.º A dotar a la ofendida, si fuere soltera o viuda.

“2.º A reconocer la prole, si la calidad de su origen no lo impidiere.

“3.º En todo caso a mantener la prole.”

This case presents the question whether the liability declared in that article of the Penal Code must be enforced exclusively in a criminal proceeding or whether it can be enforced in a civil proceeding, without resort to the criminal courts. No criminal prosecution was ever commenced against Don Isidro de la Rama during his lifetime for this alleged crime of abduction. It is evident that if this action can be maintained against the heirs of Isidro de la Rama, it could have been maintained against him in his lifetime without first proceeding against him criminally. The appellant has cited no authority to show that such action can be maintained”, and we do not think any such exists. Manresa says in his commentaries on article 135 of the Civil Code that a civil action can not be maintained in such cases unless a final judgment in a criminal proceeding for abduction is attached to the complaint. (1 Commentaries on the Civil Code, p. 508.)

Alcubilla says:

“o se limita a hacer eficaces las *sentencias* en que se impone como *pena* el reconocimiento de la prole, conforme al articulo 464 delCodigo Penal.” (Diccionario de la Admiistracion Espanola, vol. 6, p. 14.)

Groizard says : “El 1ogico enlace de la ley criminal y de la ley civil en esta delicada materia, se demuestra por el articulo 135 del novisimo Codigo Civil. En el se fijan los casos en que el padre esta obligado a reconocer al hijo natural y despues se aflade: En los casos de violacion, estupro o rapto, se estara a lo dispuesto en el Codigo Penal, en cuanto al reconocimiento de la prole.’ Lo cual equivale a decir que tambien el padre estara obligado a reconocer la prole cuando deba hacerlo, con arreglo a lo que la ley penal tiene establecido. Pero como sobre la forma y medios de realizar ese reconocimiento, nada el Codigo Penal nos ha dicho, lo 1ogico es que, una vez declarada por *sentencia*,

la obligacion, esta se consigne, en cuanto sea posible, en una de las formas legales, establecidas por el articulo 131 del Codigo Civil.”

(Codigo Penal, yol 5, p. 259.)

Scaevola says, speaking of the exception in regard to the investigation of paternity made in cases of abduction:

“Tal exception es la consecuencia de un crimen, y de un crimen probado.”

(Comentarios al Codigo Civil, vol. 3, p. 184.)

As far as we have been able to ascertain, this is the first time that such a case as this was ever presented, and therefore it is not surprising that no judgments can be found relating to the question, and no positive statements by the commentators, but it is apparent that all of the commentators have taken it for granted that this liability was a consequence of a criminal prosecution, and that it could not be enforced except by means of a criminal prosecution, or if attempted to be enforced in a civil suit there must necessarily exist a final judgment, rendered in a criminal case. We hold that this action can not be maintained on the ground that the crime of abduction was committed by Don Isidro de la Rama, he not having been prosecuted criminally for that act during his lifetime.

The contention of the appellant is that article 449 of the Penal Code imposes a civil responsibility upon the criminal, and by the terms of article 133 of the same code, that civil responsibility survives the death of the criminal. It is to be borne in mind, however, that the liability declared by article 449 can not exist independently of the crime, and we have just held in the cases of *Infante vs. Figueras*^[1] (No. 1884) and *Buenaventura vs.*

Urbano et al. (No. 2205) that the fact of paternity, in cases where no crime is committed, imposes no liability upon the father. This is not true in those cases of civil responsibility mentioned in the other articles cited from the Penal Code.

The judgment of the court below is affirmed, with the costs of this

instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith, and the case remanded to the court below for execution of said judgment. So ordered.

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

^[1] See 5 Phil. Rep., 1.

^[1] 3 Phil. Rep., 691.

^[1] Page 738, *supra*.
