

[ G. R. No. L-9623. January 22, 1957 ]

**LEONCIO DYOGI, AIDA DYOGI, LAURENTINO DYOGI, CARMEN DYOGI, AVELINA DYOGI, FELICIDAD DYOGI, GLORIA DYOGI, LILIA DYOGI, LEONCIO DYOGI, JR., AND ROMEO DYOGI, PETITIONERS, V. NICASIO YATCO, AS JUDGE OF THE QUEZON CITY FIRST INSTANCE, BASILIA VDA. DE JUAN FRANCO, ROY FRANCO AND BENJAMIN LIGGAYU, RESPONDENTS.**

**D E C I S I O N**

**BENGZON, J.:**

Petition to compel the respondent judge to hear Civil Case No, 2239 of his Quezon City court independently of the proceedings in Criminal Case No. 4367 of the Rizal court of first instance.

On June 26, 1953, Teresita Young de Dyogi was run over and mortally injured on Samson Road, Caloocan, by the automobile of Basilia Vda. de Franco, allegedly driven at the time by Benjamin Liggayu and, her minor son Roy Franco. The victim died the same day.

As a result, an information for homicide thru reckless negligence was filed against Liggayu and Roy (Criminal Case No. 4367). And later the surviving husband of Teresita (Leoncio Dyogi), together with their nine children instituted a civil action against both drivers and the owner of the car to recover damages for the death (Civil Case No. 2239). Against the drivers, action was based on their negligent acts.

The owner was impleaded as such and also as mother and guardian of her minor son.

Defendants denied liability, and the case having come up for hearing in July 1954, counsel for the Francos asked, for suspension thereof in view of the criminal proceeding. Over plaintiffs' objection the petition was granted. After a year of wait, plaintiffs prayed in a written motion (July 27, 1955) that the case be heard "without, awaiting 'the criminal, action". Acting on such, petition the respondent judge on August 22, 1955 issued his order of the following tenor:

"CONSIDERING that the cause of action of the complaint filed in this case arose

out of a criminal case which is still pending and which is not among those exceptions provided for in Article 33, new Civil Code, the motion of counsel for the plaintiffs under date of July 27, 1955, is hereby denied.”

Hence this request to vacate the above order and for a writ of mandamus. The petitioners, allege error and/or abuse of discretion, because the civil action “is predicated on culpa aquiliana and not on the criminal liability of respondents Franco and Liggayu”; and also because anyway the civil action could proceed, without regard, to the criminal prosecution, in accordance with art. 33 of the New Civil Code as construed in *Carandang v. Valenton*, 51 Of. Gaz. 2878.

Obviously the trial, court followed the Rule that after a criminal action has been commenced a civil action arising from the same offense shall be suspended until final judgment in the criminal proceeding has been rendered, (107 Rules of Court sec. 1 par. c). This Rule however, has been partially amended by article 33 of the New Civil Code providing that a civil action for damages brought by the injured party in cases of defamation, fraud and physical injuries shall proceed independently of the criminal prosecution. Herein petitioners urged application of this article, contending that the civil action (No. 2239) for damages arose out of “physical injuries”. The court declined to apply the article, probably believing that homicide having resulted from the wrong not mere physical injuries the claim did not come within the amendment, or exception to the rule as His Honor put it.

Such belief constituted error, because in *Carandang v. Valenton*, supra, it was held that “physical injuries” in article 33 included bodily injuries causing death.

But there is a stronger reason advanced, by petitioners: articles 2176 and 2177 of the New Civil Code which provide,

“ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged, to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called, a quasi-delict and is governed by the provisions of this Chapter.”

“ART. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the

same act or omission of the defendant.”

Petitioners as plaintiffs in the court below, explained that their action for damages rested on culpa aquiliana, defendants’ liability<sup>[1]</sup> being independent from the criminal offense of reckless negligence. Indeed the complaint’s allegations quoted in respondents’ memorandum sufficiently describe a demand for damages caused by defendants’ quasi-delict, negligence, or tortious conduct. “Joint tort-feasors”, “negligence” were the words used. Such being the situation, in line with article 2177 above quoted, the demand must be considered separate and apart from the criminal proceeding, not subordinate to the outcome of the latter<sup>[2]</sup>. The reason is evident: whatever the result of such proceeding, it can not affect the civil action, the course of which may not consequently be suspended.

In the Carandang case, supra, the trial judge refused, to hear the civil suit for damages for physical injuries before the termination of the criminal, proceeding arising from the same wrong. Upon petition of the interested party we directed said judge to proceed with such civil case<sup>[3]</sup>. There is no reason to adjudge differently now. The order of August 22 is Leoncio Dyogi, et al. v. Nicasio Yatco, et al., revoked, and the writ of mandamus will be issued as prayed for. So ordered.

*Paras, C.J., Padilla, Montemayor, Reyes, Bautista, Labrader, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.*

*Felix, J., I reserve my vote.*

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<sup>[1]</sup> The mother’s responsibility is provided in article 2180.

<sup>[2]</sup> At one time it was not deemed feasible to maintain this independent action (Francisco v. Onrubia, 46 Phil. 327). But subsequent decisions of this Court (Barredo v. Garcia, 73 Phil. 607; Diana v. Batangas Transportation, 49 Of. Gaz. 2238) and article 2177, New Civil Code allow it.

<sup>[3]</sup> Cf. Go Kim Cham v. Valdez, 75 Phil. 113.

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