G.R. No. L-10542

[G.R. No. L-10542. July 31, 1958]

DIOCESA PAULAN, ET AL., PLAINTIFFS, ZACARIAS SARABIA, ET AL., THIRD-PARTY PLAINTIFFS-APPELLANTS, VS. ZACARIAS SARABIA, ET AL., DEFENDANTS, JUAN CADUÑGON, THIRD-PARTY DEFENDANT, MARIA M. LIM, THIRD-PARTY DEFENDANT-APPELLEE.

D E C I S I O N

BAUTISTA ANGELO, J.:

On July 25, 1951, a truck owned and operated by Zacarias Sarabia and driven by Emilio Celeste fell into a creek after it collided with another truck of the Mary Lim Line. As a result of the collision, Gaudencio Basco who was one he passengers of Sarabia's truck died. On April 19, 1955, Basco's widow and heirs filed a complaint against Zacarias Sarabia and Emilio Celeste for compensation and damages.

On July 11, 1955, defendants filed a third-party complaint against Juan Caduñgon, driver of the Mary Lim truck, and one Quintin Lim as owner and operator of the latter truck. This complaint was, however, amended on December 20, 1955 stating therein that the owner of the truck driven by Juan Caduñgon was Maria M. Lim. On January 24, 1956, Maria M. Lim filed a motion to dismiss on the grounds (1) that there is no cause of action against her, and (2) that the action, being a quasi-delict, has already prescribed. This motion was sustained on the ground of prescription and the complaint against Maria Lim was dismissed. Hence this appeal.

There is no merit in the appeal. The action which appellants desire to press against appellee is really one based on a quasi-delict which prescribes in four years, and this period having already expired when the action was taken, it is obvious that the action has prescribed. Thus, in the third-party complaint against appellee it is alleged that the collision "was the exclusive, direct and immediate result of the felonious, negligent, careless, reckless and imprudent driving of the TPU truck Mary Lim Line No. 108 by Juan Caduñgon x x x without

any regard for traffic laws, and regulations and vehicle laws as to speed, blowing of horn, right of way and other rules", which truck is owned and operated by appellee. And Article 1146 of the new Civil Code provides that an action based "upon a quasi-delict" prescribes in four years.

It is true that "When a defendant claims to be entitled not a party to the action x x x to contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim, he may file, with leave of court, against such person a pleading which shall state the nature of his claim and shall be called the third-party complaint" (Rule 12, Section 1). And appellants may invoke this privilege by bringing into the case the owner of the truck which in their opinion has been the one responsible for the accident, but this can only be done if the claim is still enforceable and not when prescription has already set in. While this provision of the rule has been adopted to avoid multiplicity of actions, such however can no longer be invoked when the action is already barred as in the present case.

But it is contended that the action of appellants has not yet prescribed if the period of four years should be counted from the date the main action was filed against them by the plaintiffs, which is April 19, 1955, because their amended third-party complaint was filed against appellee only on December 20, 1955. And this is so, they contend, because the purpose of their action is only to ask reimbursement from appellee. But appellee contends that this theory is erroneous because the nature of the present action being one for damages it is but proper and reasonable that the period of four years be computed from the day the damage is caused. In this case collision took place on July 25, 1951 and so more than four years had elapsed when the amended third-party complaint was filed against appellee.

We find correct the contention of appellee. The law ordinarily provides that the period during which an action may be brought shall be computed from the time the right of action accrues (Articles 1144 & 1149, new Civil Code), but nothing is provided in this respect with regard to an action quasi-delict, for Article 1146 (new Civil Code) simply provides that the action shall be instituted within four years. There being no provision as to when shall the period of four years commence to run, the provision of Article 1150 shall apply, which reads: "The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought." Evidently, the day therein referred to is that the collision, for an action based on a quasidelict can be brought now independently of the criminal action and even regardless of the outcome of the latter (Article 31, new Civil Code). There can therefore be no dispute that the action of

appellants against appellee should have been brought within the period of four years counted from July 25, 1951.

But even if appellee is not brought in as third-party defendant as desired by appellants, we may say that no prejudice would thereby result to appellants, because the liability of appellee could still be pleaded and proven by appellants. In fact, that is the special defense pleaded by appellants in their answer to the main complaint. They claimed that the collision was "the direct result and responsibility of the driver of TPU truck No. 108" belonging to appellee. So that if they succeed in proving such defense even in the absence of appellee, they could still be exempt from liability even if no judgment thereon could be rendered against the latter. Anyway, the action of the plaintiffs against appellee has also prescribed.

Moreover, under the law, "The responsibility of two or more persons who are liable for a. quasi-delict is solidary" (Article 2194, new Civil Code), and "A solidary debtor may, in actions filed by the creditor, avail himself of all deefenses which are derived from the nature of the obligation x x x.With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible" (Article 1222, *Idem*.). In other words, in the event that appellants be held co-responsible with appellee for the result of the collision, they may invoke in their favor not only the defenses that pertain to their share in the act but also those pertaining to the share of appellee, including that of prescription.

The claim that the action of appellants against appellee should be deemed interrupted when the drivers of the two trucks were criminally prosecuted as a result of their negligent act, is untenable, for such interruption only accrues of the benefit of the offended party and not of appellants. This is upon the theory that the institution of a criminal carries with it the institution of the civil action unless the offended party reserves his right to institute it separately [Rule 107, Section 1 (a)]. But as regards an action based on a quasi-delict, the rule is different. As already stated, when an action is based on an obligation not arising from the act or omission complained of as a felony, such action may proceed independently of the criminal action and regardless of the result of the latter (Article 31, new Civil Code), which shows that the institution of a criminal action cannot have the effect of interrupting the institution of a civil action based on a quasi-delict.

Wherefore, the order appealed from is affirmed, with costs against appellants.

Paras, C.J., Bengzon, Padilla, Concepcion, and *Endencia, JJ.*, concurs.

Montemayor, J., see dissent.
Reyes, J., concurs in the opinion of Justice Reyes, J.B.L.
Reyes, J.B.L., J., see concurring opinion.
Felix, J., concurs in a separate opinion.

CONCURRING OPINION

REYES, J.B.L., *J.*:

I agree with Justice Bautista Angelo that the dismissal of appellants' third-party complaint should be affirmed. My reasons are these:

The mishap that gave rise to responsibility for the death of Gaudencio Basco, passenger in the Sarabia truck,can only be due to one of three possibilities: (1) exclusive fault of appellant Sarabia's truck: driver; (2) exclusive fault of the driver of the truck of appellee Maria Lim; or (3) common fault of both drivers.

If the accident was the exclusive fault of Sarabia's driver, then the appellant can have no cause of action against appellee Lim. The former can not pass to the latter the burden of his own exclusive fault. This point is too evident to need elaboration.

On the other hand, if the death of Basco was exclusively due to the fault of Lim's driver (as appellant Sarabia alleges third-party complaint), then the action against Sarabia is bound to be dismissed, for he is erroneously sued. But he will have no action against Lim, because he will not be made liable in damages, and the wrongful suit is the fault of the heirs of Basco, not the fault of Lim.

On the third alternative, that both truck drivers were negligent and both contributed to the death of Basco, two further subsidiary possibilities may be examined: either the resulting liability of the two carriers is solidary or else it is not solidary.

If both carriers is solidarily liable, the heirs of the deceased passenger (Basco) no longer have any action against Lim, because of extinctive prescription. Since Basco was not Lim's passenger, Lim can not be liable for his death on contract (*ex contractu*), but only on tort (*quasi ex delicto*); but the new Civil Code provides (Art. 1146) that actions upon quasi-delicts must be instituted within four years, counted from the day the action could be brought (Art. 1150), so that any action of Basco's heirs to recover damages from Lim has

prescribed four years after the accident happened (July 25, 1951). This means that from and after July 25, 1955, Basco's heirs could no longer recover from Lim her share of the damages; and if they can not recover it directly, they can not do so indirectly, by collecting damages in full from Sarabia and forcing Lim to repay her share to Sarabia by way of contribution. It would be going around the prescriptive bar. For this reason, Sarabia could plead the prescription of Lim's share of the indemnity, and restrict the heirs of Basco to the recovery of Sarabia's exclusive share, pursuant to Art. 1222 of the new Civil Code:

> "Art. 1222. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible."

Since Sarabia can be made to answer only for his own share of the damages, he will have no reason to sue Lim for contribution.Sarabia can not compel Lim to defray any part of his (Sarabia's) own individual share of the damages.

Lastly, if the liability of Sarabia and Lim is not solidary, then it will be *mancomunada*, and the obligations of Lim and Sarabia will be distinct from one another" (new Civil Code, Art. 1208); and neither bound to render entire compliance with the prestation (Id. Art. 1207). Since *mancomunada* obligations are in law distinct and separate debts, neither debtor will answer for the other; and neither can compel the other to contribute. Each debtor will shoulder his own share. Thus, once again, Sarabia will have no cause of action against Lim.

Thus, anyway I look at it, appellant Sarabia's complaint against appellee Lim must be dismissed.

CONCURRING OPINION

FELIX, J.:

I concur in the majority decision for the reasons adduced therein as well as in the

concurring opinion of Mr. Justice J.B.L. Reyes. I wish, however, to state the following:

Gaudencio Basco died as a resuIt of a collision between a truck operated by Emilio Celeste and owned by Zacarias Sarabia, of which the former was a passenger, and a truck driven by Juan Cadungcon and owned by Maria M. Lim. The death took place on July 25, 1951, and on April 19, 1955, Basco's widow and heirs filed a complaint against Zacarias Sarabia and Emilio Celeste for compensation and damages brought about by the breach of a contract of, carriage. In turn, these defendants filed on July 11, 1955, a third-party complaint, which was amended, against Juan Cadungcon and Maria M. Lim. Then the latter filed a motion to dismiss the third-party complaint on the ground that (1) there was no cause of action against her and (2) that the action being on an obligation resulting from a quasi-delict, it had already prescribed. This motion was sustained by the lower court from which the third-party complainants appealed.

The issue. – On these facts the issue involved in this controversy and submitted to Our determination is whether the action subject of the third party complaint against Maria M. Lim has prescribed for having been presented after 4 years from the death of Gaudencio Basco.

As may be seen from the foregoing, there are 2 civiI actions that could have been instituted against Maria M. Lim: (1) a civil complaint under Article 2176 in connection with Article 2180 of the Civil Code for the alleged negligence of his driver, Juan Cadungcon, which prescribes after four years – Art. 1146 of the Civil Code; and (2) a civil complaint to answer subsidiarily for the obligation of her driver and co-defendant Cadungcon under Article 103 of the Revised Penal Code, which under the circumstances of the case at bar would prescribe after the lapse of ten years (Art. 90, 3rd par. of the Revised Penal Code), since the institution of a criminal action carries with it the corresponding civil liability, unless otherwise is provided by the complainant (Section 1-(a), Rule 107 of the Rules of Court).

Now, under Article 1161 of the CiviI Code, "civil obligations arising from criminal offenses shall be covered by the penal laws subject to the provisions of Article 2177 and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations and of Title XVIII of this Book, regulating damages."

Section 2177 of the Civil Code provides, however, that "responsibility for fault or negligence under article (2176) 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". Apparently, none of the 2 drivers of the trucks that collided causing as a result or the death of Gaudencio Basco has: been prosecuted for homicide through. reckless negligence, and as the responsibility of Maria Lim for the criminal negligence of her driver (if the latter was guilty thereof) is only subsidiary, and as no civil action can be instituted against the master for any subsidiary civil liability of her employee arising from a criminal offense where there is no previous criminal action to determine the latter's guilt, it follows that we have to treat her liability involved in the case at bar as one coming within the purview of Art. 2176 in connection with Art. 2180 of the Civil Code which, as above stated, prescribes after the lapse of four years from the date her responsibility accrued, that is, from July 25, 1951, when Gaudencio Basco died (Art. 1146, C.C.). Anyway, the third-party plaintiffs elected to institute the action under the provisions of Article 2176 in connection with Art. 2180 of the Civil Code, because Maria Lim's liability arose from a violation of contractual obligation, but from quasi-delict and we have to apply to the case the period of prescription provided in Section 1146 of the Civil Code, i.e., 4 years. The fact that the third-party complainants are not the widow and heirs of the deceased Gaudencio Basco but defendants Zacarias Sarabia et al., is no reason for transferring the date of the commencement of the period of prescription from the date when the liability of the appellees, if any, actually arose to the date of the filing of the action by the widow and heirs of Gaudencio Basco – which of different nature – against the defendants and third- party plaintiffs.

For the foregoing considerations, I concur in the decision of the majority, penned by Mr. Justice Felix Bautista Angelo.

DISSENTING OPINION

MONTEMAYOR, *J.*:

For the purposes of this dissent, the facts in the case as related in the majority opinion may be reduced to the following: On July 25, 1951, a bus where the deceased Gaudencio Basco was a passenger, owned by Zacarias Sarabia, sustained a collision with another bus owned by Maria M. Lim, resulting in the death of Basco. On April 19, 1955, Basco's widow and heirs filed a complaint against Sarabia for compensation and damages for breach of the contract of carriage. On December 20, 1955, Sarabia filed a third-party complaint against Maria Lim under Rule 12, Section 1, of the Rules of Court, which provides that "when a

defendant claims to be entitled against a person not a party to the action xxx to contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim, he may file, with leave of court, against such person a pleading which shall state the nature of his claim and shall be called the third-party complaint." Acting upon motion of Maria Lim to dismiss the third-party complaint on the ground that the action being based on a quasi-delict had already prescribed, the thirdparty complaint was dismissed and Sarabia is appealing from that order of dismissal.

The majority opinion finds the appeal without merit the ground that Sarabia's action being based a quasi-delict, it prescribed in four years from the date of the collision on July 25, 1951. I agree that the action of Sarabia against Maria Lim, being based on a quasi-delict, prescribes in four years under Article 1146 of the New Civil Code. I disagree, however, that said four years should be computed from the date of the collision. To begin with, Article 1146 which prescribes the period of prescription of four years, does not state when the said four years begin to run. On the other hand, Articles 1149 and 1150 of the same code, provide as follows:

> "ART. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues."

> "ART. 1150 The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought."

When did the right of action or the cause of action of Sarabia accrue? It could not have been on the day of the collision because he is not claiming compensation for the damage to his bus. All that he wants from Maria Lim is that in case the widow and heirs of the deceased Basco succeed in their action against him, and he is ordered to pay compensation or damages for breach of contract, he be able to obtain contribution should or indemnity from her because the breach of the contract of carriage was due, if not exclusively, at least in part, to the negligence of the driver and agent of Maria Lim who was driving her bus.

Before Sarabia was sued by the widow and heirs of Basco for compensation and damages, due to breach of contract of carriage, could Sarabia have brought an action against Maria Lim for damages or indemnity for the death of Basco? It is clear that he could not have done so for the reason that he then had no cause of action because he had suffered no damage. His cause of action accrued only when he was sued by the widow and heirs of Basco and in the event that said suit succeeded. Why should we expect and require Sarabia to bring his action against Maria Lim within four years from the date of the collision when he could not have had a valid cause of action until and unless he was sued for damages and indemnity by the widow and heirs of his deceased passenger? It is in cases like this where the cause of action of a defendant depends upon or is contingent upon the success of suit against him that Section 1 of the Rules of Court allows him to bring in a third party from whom he might obtain contribution or reimbursement for any damages he may be ordered to pay in the principal suit. This is to avoid multiplicity of suits. Of course, Sarabia could have waited until the action against him was definitely decided and if held liable, bring an action against Maria Lim for compensation, reimbursement, etc., but that would mean multiplicity of suits which the law frowns upon, besides the fact or possibility that by the witnesses to prove the negligence of agent of Maria Lim may have died or would no longer be available. Far better it would be that Maria Lim be made a party in the main case, so that may hear the evidence of all the parties and the real cause of the collision and the relative responsibility or negligence of each of the two the two buses that figured in the collision negligence is relative specially in case of collision between two motor vehicles. One driver may have been negligent and the other entirely blameless. Or it may be that there was negligence on the part of both drivers, meaning that there was contributory negligence on the part of both and the amount, degree or gravity of said contributory negligence should be weighed and ascertained. This can hardly be done if only one of , the parties to the collision is before the court. Moreover, under Rule 12, Section 1 of the Rules of Court regarding third-party complaint, only a party defendant can bring in a third party like Maria Lim under a third party complaint. Before Sarabia was made party defendant in the main suit, he could not have impleaded Maria Lim for the simple reason that he was not yet a party defendant and that he then had no cause of action against her. This will render more clear and show why it would be just that the four year period of prescription as to Sarabia should begin to run against him, not from the date of the collision, but from the time that he was sued and was made a party defendant.

The majority opinion cites Article 2194 of the New Civil Code to the effect that the responsibility of two or more persons who are liable for a quasi-delict is solidary, possibly

meaning to say that Sarabia being held liable for a quasi-delict, his responsibility is solidary, and that as a solidary debtor he may in actions filed by the creditor, avail himself of all the defenses which are derived from the nature of the obligation. The majority presumably forgets that Sarabia is being sued by the widow and heirs of Basco not for a quasi delict, but for breach of contract of carriage, which is widely different. The responsibility of a common carrier like Sarabia to his passengers, is extraordinary and enormous, as may be seen from Article 1755 of the New Civil Code, which reads:

> "ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances."

To avoid responsibility for the death of his passenger, Sarabia had to prove that he and his driver used the utmost diligence of very cautious persons, and .that he tried to carry said passenger as far as human care and foresight can provide. If he fails to prove this; if in the carriage of the passenger any amount of carelessness, negligence or lack of diligence had entered, then the contract of carriage was breached, and Sarabia would be responsible financially for the death of Basco and he would have to pay. But supposing that in the breach of his contract of carriage, he could prove that the driver of Maria Lim was also negligent, even recklessly negligent, and greatly contributed to the collision, and that were it not for said contributory negligence, the collision would not have occurred, then the contract of carriage would not have been breached. In that case, . although Sarabia is found "liable for breach of contract of carriage, he could proceed against Maria Lim and have her reimburse him for at least part of the damages he (Sarabia) may be ordered to pay the widow and heirs of Basco in the proportion of the negligence of her driver. Under such circumstances, the purpose of the law allowing third-party actions shall have been achieved, because in one single suit, conflicting claims and defenses by different parties shall have been determined and definitely settled.

For the foregoing reasons, dissenting from the majority opinion, I hold that it was error for the trial court to dismiss the third-party complaint that said order of dismissal should be set aside and the case remanded for further proceedings.

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